

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL)
PRESCRIPTION)
OPIATE LITIGATION,) Civil Action
) Number 1:17MD02804
)
APPLIES TO ALL CASES)
)
)

- - - - -
TRANSCRIPT OF PROCEEDINGS HAD BEFORE

DAVID R. COHEN

SPECIAL MASTER

ON WEDNESDAY, JANUARY 9, 2019
- - - - -

Official Court Reporter: Shirle M. Perkins, RDR, CRR
U.S. District Court
801 West Superior, #7-189
Cleveland, OH 44113-1829
(216) 357-7106

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

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1 WEDNESDAY SESSION, JANUARY 9, 2019, AT 8:45 A.M.

2 SPECIAL MASTER COHEN: Good morning,
3 everybody.

4 COUNSEL: Good morning.

09:11:45 5 SPECIAL MASTER COHEN: Room full. Thank you
6 all for coming in.

7 I apologize for Cleveland's weather. It's actually
8 not too bad for this time of year. Okay.

9 Our Court Reporter today is Shirle Perkins. Please
09:11:58 10 identify yourself -- oh, wait a minute. I want to make sure
11 that -- can folks on the phone hear me?

12 A VOICE: Yes, we can.

13 SPECIAL MASTER COHEN: Okay. Thank you.

14 I'm going to -- we're just beginning. This is Special
09:12:16 15 Master David Cohen. If you could please mute yourself
16 unless you are speaking, I think that will help. I'm going
17 to try to remind everybody here to speak into the
18 microphones. We're in the courtroom with roughly 50 folks,
19 most of whom are not near a microphone. So I'm going to ask
09:12:37 20 people either to be in front of the mike or to go to the
21 lectern to make sure everybody can hear what's going on.

22 Today's Court Reporter is Shirle Perkins. She knows
23 some of you but not most of you. So if every time you
24 identify yourself before you begin speaking, I think that
09:12:52 25 will help make things clear as we go forward today.

1 Normally when we're like this together on the phone,
2 during our conferences on the phone, I record that but don't
3 have an official court reporter. The difference today being
4 that we have an Official Court Reporter means that, of
09:13:19 5 course, this is on the record and, therefore, if you look at
6 my appointment order, you'll see that there is no need to
7 request to formalize ruling. This is the formal ruling on
8 the record. So that takes care of the three-day period
9 within which you have to request a formalized ruling if you
09:13:36 10 don't like it. You can begin the objection process
11 immediately.

12 I sent out an e-mail yesterday. I sent out a number
13 of e-mail rulings and said if anybody wants them formalized,
14 they should let me know by this morning. I haven't heard
09:13:54 15 anything via e-mail saying that someone wants me to
16 formalize a ruling that I e-mailed out yesterday. Let me
17 ask now if that is the case.

18 Everybody is satisfied with the e-mailed rulings?
19 Okay. Hearing nothing, I will assume that's the case.

09:14:10 20 So we have the usual agenda with many, many items.
21 I'm going to go through them more or less in order. But, I
22 am going to start out of order with Agenda Item 83, per Mark
23 Lynch's request because counsel, I believe in California,
24 has -- who is going to address that, Ms. Henn, counsel for
09:14:36 25 Defendants, has other obligations and so I agreed to take

1 that first so that we don't mess up her day.

2 MS. HENN: Thank you, Special Master Cohen.

3 Emily Henn of Covington and Burling on behalf of McKesson.

4 SPECIAL MASTER COHEN: You're welcome. Good

09:14:54 5 morning.

6 MS. HENN: Good morning.

7 SPECIAL MASTER COHEN: Are you in California?

8 MS. HENN: I am.

9 SPECIAL MASTER COHEN: Very early in the

09:15:01 10 morning.

11 MS. HENN: Thank you.

12 SPECIAL MASTER COHEN: And it was also

13 suggested that this might not be right but put it this way;

14 we're not going to get to it really on the merits today but

09:15:12 15 what I did want to talk about -- and I don't know, Paul

16 Farrell, if this is your issue on the Plaintiff's side, but

17 I want to figure out how to address this.

18 The issue that Plaintiffs raised is that there are

19 confidentiality designations made both for testimony in

09:15:31 20 deposition and also of documents, and Plaintiffs assert that

21 that's limiting them either with respect to upcoming motions

22 and/or the ability to communicate with their clients. I

23 believe that's the issue.

24 And so Plaintiffs have asked me or the Court to review

09:15:54 25 the confidentiality designations to determine whether

1 they're appropriate.

2 Of course, there are thousands and thousands and
3 thousands of lines of deposition that have been marked
4 confidential, and probably thousands, maybe millions, of
09:16:11 5 documents that have been marked confidential, and the
6 question is how do we do this, how do I do that, when does
7 it need to be done. Obviously I can't look at every
8 confidentiality designation. It has to be that there will
9 be some method where we -- where I and other folks on the
09:16:34 10 Court who will help me make determinations and then apply
11 that.

12 So let me start with the Plaintiffs on this question
13 and ask what it is you need, what the quickest, easiest,
14 best way we can do that is, and when you need it?

09:16:50 15 ^ **(Portion to be sealed.)**

16 MR. FARRELL: Paul Farrell on behalf of the
17 Plaintiffs.

18 One of the very first depositions that was taken in
19 the case was Nate Hartle, H-A-R-T-L-E, for McKesson as their
09:17:09 20 30(b)(6) designee. By virtue of the fact that this was one
21 of the first depositions in this litigation, it was the
22 first to ripen with the designation of confidentiality.

23 What we saw was that we felt as if there was an
24 overdesignation of confidentiality, and we tasked
09:17:31 25 Mr. Anthony Irpino, who's here, to begin spearheading this,

1 knowing that there would be hundreds and hundreds of
2 depositions to follow.

3 So we've used McKesson's Nate Hartle's deposition
4 transcript as sort of the first opportunity for you to call
09:17:54 5 balls and strikes.

6 Since that time, we have added to it the 30(b)(6)
7 deposition of Cardinal Health, as well as AmerisourceBergen.
8 The reason we've added those three together and presented it
9 to you is because we believe that there are categories of
09:18:16 10 designations that you could call balls and strikes on for
11 each of the Big 3 distributors. That would then show us a
12 template moving forward, which would hopefully, if the
13 Plaintiffs are correct, result in the de-designation of a
14 tremendous amount of documents and testimony that have been
09:18:39 15 so designated.

16 For instance, in the Cardinal Health privilege log,
17 going through the process and selecting 100 documents has
18 resulted in 80 some of the designations for attorney/client
19 privilege being withdrawn.

09:18:54 20 The reason this is important to us is because we
21 represent public entities. [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

09:19:24 25 That's something that I would like to share with the Cabell

1 County Commission in the City of Huntington when they make
2 decisions, especially about settlement or anything else.

3 Now showing this to the client is one thing, but
4 showing it to the Mayor of Huntington and the Cabell County
09:19:46 5 Commission, who are charged with making decisions on behalf
6 of the 100,000 people in my community, it seems to me at
7 some point in time, we need to be able to share it with our
8 clients and they need to be able to share it with the people
9 they represent.

09:20:02 10 SPECIAL MASTER COHEN: Was that a particular
11 line of deposition marked confidential?

12 MR. FARRELL: Yes.

13 SPECIAL MASTER COHEN: Let me make clear.
14 This is a public hearing, we're on the record. Everything
09:20:14 15 you say right now is public and so even that now has become
16 public. I want to make sure everybody understands the
17 ground rules. I'm sure that was inadvertent.

18 MR. FARRELL: It was inadvertent.

19 So there's --

09:20:30 20 MS. HENN: Special Master Cohen, this is Emily
21 Henn.

22 SPECIAL MASTER COHEN: Go ahead.

23 MS. HENN: We would request that you deny this
24 invitation to begin line by line review of confidentiality
09:20:44 25 designations.

1 As you know, our position is that there's no need to
2 undertake this process at this time, and that it's premature
3 before summary judgment motions are submitted, other types
4 of motions, and before the parties designate exhibits for
09:21:01 5 trial.

6 Unlike the privilege reviews Mr. Farrell just
7 referenced and many of which you've been asked to undertake,
8 confidentiality designations are not blocking Plaintiffs'
9 access to anything. They have it all. And in this respect,
09:21:18 10 these issues are very different and much less urgent in
11 privilege disputes which need to be resolved for the
12 opposing party to even have access to the information.

13 SPECIAL MASTER COHEN: So, Emily, I think
14 I confused you about timing, which is the third subject, but
09:21:34 15 I'm more curious about what the best way to do it is when I
16 get to it. For example, I think that there have been
17 requests of the Court to undertake privilege review for
18 certain critical documents that the parties want to use in
19 deposition, call back, things like that, that's more time
09:21:58 20 sensitive -- although you wouldn't know it by my response to
21 all of that stuff -- and probably less time sensitive are
22 the confidentiality designations. I agree.

23 My first question and more important question is how
24 do I do it? It sounds like Plaintiffs are saying, "Well, we
09:22:14 25 propose that you take a look at the three 30(b)(6)

1 depositions of the three distributors and go through those,"
2 and that's kind of a limited set of information and a
3 running start. So I wonder whether you agree with that or
4 have another approach in mind?

09:22:29 5 MS. HENN: Special Master Cohen, this is Emily
6 Henn, again.

7 We have an approach that we think would be even more
8 streamlined and more efficient. When you ask the question
9 and when Mr. Farrell spoke this morning, he talks about the
09:22:46 10 need to discuss materials or answers or information with his
11 client, and the specific material that he discussed in open
12 court just now is designated or was designated confidential,
13 not highly confidential, and under Paragraph 33C and D of
14 the protective order, Mr. Farrell has always had the right
09:23:07 15 to discuss that with his client, with individual parties,
16 with present or former officers, directors, or employees of
17 that party.

18 It sounds like Plaintiffs' real animating concern here
19 is the ability to discuss information with their client, and
09:23:23 20 the only restriction on that under the protective order is
21 highly confidential information, which is quite limited.
22 It's quite a small subset of the -- of the designations
23 Plaintiffs have raised here. And my suspicion is that any
24 highly confidential information that Plaintiffs feel a need
09:23:41 25 to discuss with their client, if they would raise that issue

1 with Defendants, which they have not done, it would be
2 readily resolved. Highly confidential is typically
3 designated that way because it's competitively sensitive.
4 And so it should be relatively straight forward for the
09:24:00 5 parties to work out limited agreements for Mr. Farrell's
6 clients to review material like that on an as-needed basis
7 while otherwise maintaining protections over highly
8 confidential information.

9 So our suggestion would be that the parties, the
09:24:16 10 Defendants continue to work and meet and confer with Mr
11 Irpino, who is a consummate professional and very productive
12 in working through these issues. That meet-and-confer
13 process has done its job in limiting and reducing the
14 disputes over confidentiality designations, but we could add
09:24:35 15 to that process a special process to get attention on this
16 highly confidential information that Plaintiffs need to
17 discuss with their clients or feel that they need to discuss
18 with their clients so that won't be an issue.

19 It will also dramatically reduce the issues that we
09:24:53 20 would ever have to bring to your attention, in my view.

21 SPECIAL MASTER COHEN: So, Mr. Farrell -- I
22 need to go back and forth between last and first names
23 because I call you all by first names. Now in court, I'll
24 be more formal and forget. So just get used to it -- that
09:25:10 25 seems reasonable, if that's really what you're after. If

1 what you're after is being able to use this information more
2 publicly, it doesn't get you where you want. And so I need
3 to hear what your response is to that.

4 Seems like a good starting point to take it that way.

09:25:26 5 MR. FARRELL: The short answer and the honest
6 answer is I want the public record to be complete and
7 transparent because I represent, as the co-lead of this
8 litigation, 1400 communities that are asking for some
9 resolution to this epidemic.

09:25:52 10 And I guess my primary focus is that I don't believe
11 some of this information is confidential at all. The
12 statement that I made earlier, how could that possibly be
13 confidential? That's something that I feel the need and the
14 desire, as not only a lawyer, a co-lead in representing
09:26:20 15 clients, but living amongst the epidemic in Huntington, West
16 Virginia. So when I see the overdesignation of things that
17 are not confidential as confidential, it's a problem for me.

18 Now, I understand that through the process of
19 discovery, that we don't try this case in the public realm.
09:26:41 20 But there's a difference with this litigation because we
21 represent the public interest.

22 So from day one, I have continued to communicate my
23 mission is one of transparency, and I believe that the
24 designations that exist are improper. I'm willing to
09:27:02 25 concede that if there's something highly confidential, then

1 that's a whole different issue. But, when you look at Nate
2 Hartle's deposition, there's very little, if anything at
3 all, that's in there that should be cloaked with
4 confidentiality.

09:27:21 5 SPECIAL MASTER COHEN: So do you believe that
6 both -- that all of the confidentiality issues, that the
7 best way to address those, at least as a first step, would
8 be for the Court to take the three 30(b)(6) depositions you
9 mentioned on the three distributors in particular, go
09:27:36 10 through them, determine whether the Court agrees with the
11 confidentiality designations, and then, you know, give it
12 back to the parties and say run with it?

13 MR. FARRELL: Yes. And if you wanted to
14 narrow it down even further, you could start with just the
09:27:50 15 McKesson deposition and the exhibits that are attached to
16 it, and if you -- if you start with that, I think you'll see
17 that is where some clear balls and strikes are.

18 SPECIAL MASTER COHEN: Did you want to say
19 something, Ms. Henn?

09:28:10 20 MS. HENN: Yes. This is Emily Henn again.

21 We would submit that there is really no legitimate
22 interest in doing what Mr. Farrell now admits that he wants
23 to do, which is to publicize pretrial discovery.

24 Judge Polster's order dealing with ARCOS data, makes
09:28:27 25 clear that the Judge views publicizing this kind of

1 information as eviscerating the protective order that the
2 parties agreed on and contradicting as a cloak the bedrock
3 principal that discovery is a private process, the sole
4 purpose of which to assist trial preparation, and in this
09:28:47 5 case, global settlement discussions.

6 We've detailed in our letter numerous specific and
7 ongoing examples of Plaintiff's efforts to seek pretrial
8 publicity in this case. The public release of information
9 could influence potential jurors and result in a case being
09:29:05 10 tried outside the courtroom.

11 Now, the process that Mr. Farrell is suggesting needs
12 to happen of limit -- of limiting confidential information
13 naturally occurs when you get to court filings and summary
14 judgment because a different standard applies to things that
09:29:25 15 are designated to be in a public realm for purpose of
16 resolving the claims in this case. But, that's not the case
17 with pretrial discovery. And Defendants feel very strongly
18 that it's not appropriate, for example, for Plaintiffs to
19 have documentary film crews coming to depositions in this
09:29:44 20 case.

21 Indeed, Paragraph 10 of the protective order has a
22 broad standard for what constitutes confidential
23 information, and it includes things that are research,
24 technical, commercial, or financial information that the
09:30:02 25 designating party has maintained as confidential or other

1 information that's not publicly available. It's a broad
2 standard, and we submit that orderly -- an orderly
3 completion of the discovery, much of which remains to be
4 done in an extremely compressed time period, would be best
09:30:22 5 served by maintaining confidentiality procedures in the
6 protective order, having the type of meet-and-confer process
7 that all Defendants have be willing to undertake in good
8 faith, and then allowing these issues to sort themselves out
9 at the time they need to be sorted out, which is when
09:30:39 10 summary judgment and other dispositive motions are filed
11 with the Court.

12 SPECIAL MASTER COHEN: Okay.

13 So I think I understand the parties' positions. I
14 will observe that I agree with you, and the reason I agree
09:30:50 15 with you, Ms. Henn, about one thing you said, is that Judge
16 Polster has made it very clear that the confidentiality
17 designations during discovery are very different from what
18 happens at summary judgment and a trial, and he said
19 numerous times that everything is public at a public trial,
09:31:07 20 including information that's been designated even as highly
21 confidential. There are ways of dealing with that in a
22 public trial, but for the most part, the doors are wide open
23 on all of this coming into the public knowledge.

24 So I'm not going to decide immediately right now what
09:31:25 25 to do with this issue because I don't think I need to. But,

1 I will tell you that my inclination is to have somebody,
2 maybe me, maybe somebody else, address the confidential
3 designations in the -- is it Hurtle?

4 MR. FARRELL: Hartle --

09:31:43 5 MS. HENN: Hartle, H-A-R-T-L-E.

6 SPECIAL MASTER COHEN: The Hartle deposition
7 and let the parties know what the Court thinks about those.

8 If -- I also have no problem with Plaintiffs,
9 Mr. Irpino, and Defendants, Ms. Henn, or whomever else, go
09:32:01 10 through this and try and resolve some of those issues before
11 that. But you should probably get do it because I may at
12 any point assign this to somebody and you'll just get
13 rulings back. So if you can moot what the Court has to do
14 with that, that would be a good idea.

09:32:18 15 I see somebody at the lectern. Did you want to say
16 something?

17 MR. IRPINO: Yes or no this is Anthony Irpino.

18 SPECIAL MASTER COHEN: Hello.

19 MR. IRPINO: Hello.

09:32:29 20 I will confirm that we've had very professional, very
21 good, and productive meet and confers regarding
22 confidentiality and privilege, but right now,
23 confidentiality.

24 One of the issues that we face is that through this
09:32:44 25 process, you get to some areas where it's -- it's difficult

1 for a side representing a Defendant saying, "Oh, I'll just
2 let this go. There are some things that might not be as
3 easy, some things that may not be as easy to find in the
4 public record. The bottom line in this case is that there's
09:33:02 5 an awful lot of information that's in the public, one way,
6 shape, form, or another through congressional testimony,
7 through reports. The House Energy Committee recently in
8 December issued a report, a hundred pages long of it,
9 detailing different Defendants' threshold monitoring
09:33:21 10 systems, suspicious monitoring systems, different stuff.

11 It's difficult to go through and read that, compare
12 it, and then de-designate stuff. We get that. The point
13 here is that if we can have some stuff at the beginning from
14 the Court to give some guidance, I think that would greatly
09:33:42 15 assist the parties in the meet-and-confer process.

16 We have met and conferred on all the depositions that
17 Mr. Farrell referenced, all three of them, and there was a
18 lot of cooperation. It's just that some guidance can go a
19 long way in helping the parties with the meet-and-confer
09:33:56 20 process. And I'll just reference what we did in the BP Oil
21 Spill case.

22 We had that guidance in the beginning, and it was a
23 very efficient meet-and-confer process over hundreds of
24 depositions. So once you have that initial standard set by
09:34:12 25 the Court calling balls and strikes, it greatly helps.

1 SPECIAL MASTER COHEN: I understand. So let
2 me ask you a question, given what you've said.

3 It sounds like you would challenge some of the
4 confidentiality designations based on, for example, the
09:34:29 5 recent Congressional report. If I were to just ask somebody
6 here in the court, "Hey, take a look at the dep, go through
7 and see if you agree," how do they come up to speed with
8 what would presumably be your argument that no, this can't
9 be highly confidential or even confidential at all given
09:34:45 10 something that's out there when they don't know what it is
11 that's out there?

12 MR. IRPINO: In our submissions, we included
13 charts that matched testimony with public information.

14 SPECIAL MASTER COHEN: When you refer to
09:34:57 15 submissions, what are you referring to.

16 COUNSEL: Oh, the submissions in connection
17 with this motion.

18 SPECIAL MASTER COHEN: So you may have seen
19 the e-mail that I sent out last night saying I need some
09:35:07 20 specific pointing to e-mails. Is that -- is it -- my
21 ultimate question is, is that in the chart?

22 MR. IRPINO: Yes. We will do some specific
23 pointing to e-mails to follow up on that.

24 SPECIAL MASTER COHEN: And have Defendants
09:35:22 25 similar -- go ahead, Ms. Henn.

1 MS. HENN: I wanted to note that the
2 protective order clearly states that anything that's public
3 would qualify for confidential treatment, and the Defendants
4 are well aware of that and wouldn't suggest otherwise.

09:35:38 5 We agree with you, Special Master Cohen. If
6 Plaintiffs feel something is public, they should do more
7 than what they do in the charts that they submitted to you,
8 which is to just say this is public, it's been public
9 information. There are -- the depositions go into great
09:35:57 10 detail about aspects of Suspicious Order Monitoring that are
11 not public. And so it would greatly assist the
12 meet-and-confer process if Plaintiffs are more specific and
13 don't paint with that broad brush, just taking the position
14 that it's all public.

09:36:12 15 SPECIAL MASTER COHEN: Okay. We're getting to
16 the but --

17 MS. HENN: I just had a quick request, Special
18 Master Cohen. We would -- we would request that the portion
19 of today's transcript in which Mr. Farrell quoted our
09:36:25 20 witness be redacted from the public record just to allow the
21 regular order process to proceed. I agree with you that it
22 was likely an inadvertence, but it's not the way to resolve
23 these disputes. I don't think anyone would suggest.

24 SPECIAL MASTER COHEN: Are there any reporters
09:36:41 25 in the room? All right.

1 So the cat still seems to be in the bag. Not that it
2 was on the line. But, Shirle, can you do that?

3 COURT REPORTER: I'd need to have counsel
4 review to make sure what --

09:36:58 5 MS. HENN: We'd be happy to point out the
6 specific line if it would be helpful.

7 SPECIAL MASTER COHEN: Okay. We'll do that
8 for now.

9 MS. HENN: Thank you very much.

09:37:07 10 ^ **(End of Sealed portion.)**

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1 SPECIAL MASTER COHEN: All right.

2 I think that's all we need for Agenda 83, Ms. Henn.

3 Thank you for waking up early and addressing that.

4 MS. HENN: Thank you, again, for accommodating

09:37:16 5 my schedule. I very much appreciate it.

6 SPECIAL MASTER COHEN: You're welcome. Okay.

7 We're turning next to the first Agenda Item on the

8 list, which is Agenda Item Number 123. This has to do with

9 request by Plaintiffs to reopen a Cardinal Health

09:37:32 10 deposition. As late as 11:21 I'm told last night, the

11 parties were still working on this. And I think that

12 everybody is leaning the same direction, which is to say

13 that Mr. Fuller, Ms. Mainigi, and I seem to think the best

14 way to do this or the way that I think is the best way to do

09:37:53 15 this, and the parties are reading my mind, is not to reopen

16 the deposition but to require the opponent to answer

17 written -- a written question or written questions, and I

18 think that what was happening late last night was the

19 parties were negotiating what those written questions were,

09:38:12 20 and my understanding is Mr. Fuller, who is at the lectern,

21 is that the parties have not yet come to agreement. And so

22 what I would like to hear is that there could be an

23 additional meeting and conferring, which I know is a swear

24 word now in this case, to try and identify what the

09:38:26 25 questions are that the deponent would answer, but I can tell

1 you that that is my inclination; that is to say not to
2 reopen the deposition but to allow written questions.

3 MR. FULLER: May it please the Court. Michael
4 Fuller on behalf of the Plaintiff.

09:38:39 5 The one sticking issue -- and so after we came to that
6 realization, I sent a proposed question to Ms. Mainigi. I
7 sent it to Mr. Pyser this morning but my understanding is
8 that she forwarded it to him. And it seems to be the
9 Defendant's position that you can get an answer to the
09:39:00 10 question that was asked. My response was well, had she
11 answered that yes, they made changes to the SOM program
12 after September of '06, I would have asked further
13 questions. But, she testified she had no idea what the
14 company did for approximately a year.

09:39:18 15 SPECIAL MASTER COHEN: Yeah, I mean I can get
16 to that right now, that it's not going to be one question
17 yes or no answer; it's going to be with follow-ups, to the
18 extent that there are follow-ups that you would have asked.
19 That only makes sense to me. It's not going to be so
09:39:32 20 constrained.

21 MR. PYSER: Special Master Cohen, I can speak
22 to this a little bit --

23 SPECIAL MASTER COHEN: One second. Can you
24 first identify yourself? And second, go -- and you can sit
09:39:40 25 down. You don't need to stand, but I do need you to speak

1 into a microphone.

2 MR. PYSER: Sure. Steven Pyser on behalf of
3 Cardinal Health.

4 And Mr. Fuller's representation is correct. There was
09:39:48 5 a text with some proposed language around 11:30 last night.
6 I landed after that.

7 I had a chance to look at something that Mr. Fuller
8 sent this morning and we're happy to continue to meet and
9 confer. I think the original throughout what's been
09:40:02 10 proposed is overbroad. And I also point out that following
11 the 30(b)(6) deposition, Mr. Fuller took the deposition of
12 several witnesses from the relevant time period. They spoke
13 to those issues.

14 The questions have been, at least in our mind in part,
09:40:20 15 addressed. So we're kind of retreading ground that we don't
16 think we need to go into overly detailed changes of
17 questions that -- questions maybe they wish they would have
18 asked. They had 30(b)(6) fact witnesses, and I think the
19 record is clear on the important issues.

09:40:43 20 SPECIAL MASTER COHEN: So I'm going to give
21 directions to both parties and then I'll have to -- I think
22 that's what we need to do today. You need to continue to
23 discuss this. My ruling is there will be written questions
24 to the deponent from Plaintiffs. It's not going to be a
09:40:57 25 single yes or no question; it's going to have some

1 follow-up, assuming that the answer is, for example, yes,
2 then there would be follow-up questions normally asked. At
3 that point, it's appropriate to ask that.

4 The direction of the Plaintiffs is you need to be
09:41:08 5 searchable. If you already got the information from
6 somebody else, then you've got it. You don't need to ask it
7 again. So try and minimize, to the extent you can, what it
8 is you're asking. If you've got information from other
9 deponents, then you've got it.

09:41:19 10 I understand there's a distinction between a fact
11 witness and a 30(b)(6) witness, but if you have information,
12 you have it.

13 And so I think with that direction, my hope is that
14 when we have our next meeting, you'll tell me this is
09:41:31 15 resolved.

16 MR. FULLER: Fair enough your Honor.

17 MR. PYSER: Thank you, your Honor.

18 SPECIAL MASTER COHEN: Okay. Thank you. All
19 right.

09:41:45 20 So the next agenda item is Agenda Item Number 124, and
21 this is an issue that is a natural byproduct of a litigation
22 that is so sprawling and with so many parties.

23 And both sides have complained that they're getting
24 e-mails or letters on the same topic from different counsel,
09:42:11 25 and it becomes impossible to respond.

1 I think as a general matter, you all have been
2 sensitive to this and tried hard to avoid it. Some of it is
3 simply not to be avoided because of the nature of this
4 litigation. I sent out an e-mail asking for suggestions.
09:42:26 5 So what I want to do is just have three or four minutes of
6 colloquy between the parties, suggestions on what you can do
7 yourself to ameliorate this problem, suggestions on what the
8 other side can do to ameliorate this problem. I don't know
9 who it is really that needs to talk about it. There are so
09:42:48 10 many attorneys that it can't just be lead counsel or the PEC
11 talking about this.

12 So again, I see someone at the lectern, and I'll let
13 you give me your best idea on how to address this.

14 MR. ACKERMAN: Sure. Special Master Cohen,
09:43:05 15 it's David Ackerman on behalf of the PEC.

16 I appreciate your comments. I think the suggestion we
17 have from our side to ameliorate some of the issues we've
18 been experiencing on the Bellwether side is that Defendants
19 designate points of contact or people that we can reach out
09:43:25 20 to specific to the jurisdictions. I believe that the way
21 the Defendants had organized is that they had
22 issues-specific people, or at least that's been my
23 perception, based on the last six months or so of meet and
24 confers.

09:43:40 25 And while that is fine, it ends up that for Summit, we

1 are dealing with seven or eight different Defense counsel
2 and having to have seven or eight different meet and confers
3 where it seems, especially at this stage of the litigation,
4 it makes more sense for everyone to have one phone
09:43:59 5 conversation where we can talk about things, get all the
6 issues out and have one person on the Defendants' side who
7 can coordinate that.

8 We have done that on the Plaintiff's side with respect
9 to Defendants. We organized very early in this litigation,
09:44:14 10 you know what I think we've been calling them as handlers,
11 but essentially, Defendant teams. So my friends who are
12 representing Purdue know when there are issues regarding
13 Purdue, they're going to hear from me or Ms. Singer, or Ms.
14 Conroy, or someone from our firm.

09:44:30 15 We don't have that same kind of assurance on the
16 Plaintiffs' side, and so we end up you know having to almost
17 look at almost every single e-mail that comes in to try to
18 figure out what applies to us and what doesn't.

19 SPECIAL MASTER COHEN: How do you deal with
09:44:43 20 the issue that there are -- just as there are
21 Plaintiff-Specific issues, there are also Defendant-specific
22 issues? In other words, I'm trying to -- I'm trying to
23 understand how that would work where the issue at hand,
24 issue that's being discussed, is different as to each
09:45:03 25 Defendant.

1 MS. REDMAN: Special Master Cohen, this is
2 Sarah Redman. I'm happy to jump in or allow Mr. Ackerman to
3 respond.

4 Certain -- this is -- I'm on behalf of Purdue.

09:45:13 5 Certainly the Defense group will have to speak about it. I
6 think everyone is in agreement that we should come up with a
7 process, and everyone is in agreement that we can probably
8 work this out through a meet-and-confer, especially as we're
9 looking ahead towards Track Two. I think we're trying to
09:45:28 10 figure out kind of overall how can we improve, how can we
11 learn on what we've been doing the last ten months.

12 I think some type of hybrid approach may work here.
13 So certainly there has to be efficiencies where we either
14 divide it up by party or Defendant, and so there's some
09:45:44 15 continuity in terms of relationships. I think that's
16 valuable for both sides in terms of being able to kind of
17 negotiate and figure out who you're working with.

18 There are going to be issues I think that are best
19 handled by a particular person. So -- or a particular group
09:45:59 20 of people. I can use the example the claims data, for
21 example. That has generally been something that Allergan
22 and Purdue have taken the lead on. I think it's worked
23 quite well in the sense of there's institutional knowledge
24 there that transcends just one Plaintiff. I see it on the
09:46:14 25 Plaintiff's side. It seems like there's people who are

1 focused on privilege issues or focused on the SOM programs.
2 That seems to be something that we can work out, I think
3 organically, if we're all focused on this issue idea we
4 do need some type of system. And I think all of us want to
09:46:29 5 avoid having to respond to lots of different e-mails, and
6 certainly keep up with the tsunami of e-mails I think we're
7 all dealing with.

8 MR. ACKERMAN: To address your question,
9 Special Master Cohen, personally I'm not aware of complaints
09:46:44 10 from Defendants regarding the process. If there are
11 specific complaints, we can address them. What we have run
12 into is, for instance, getting an e-mail or a letter from
13 one counsel regarding Interrogatories 6, 7 or, you know, I
14 don't want to use 6, 7 and 8 because those numbers have
09:47:00 15 actual meaning.

16 (Laughter.)

17 MR. ACKERMAN: Getting a letter from one
18 counsel on Interrogatories 12, 18, and 19 and the letter on
19 --

09:47:09 20 SPECIAL MASTER COHEN: All the numbers have
21 meaning.

22 MR. ACKERMAN: Yeah.

23 And another letter from, you know, Interrogatories 32
24 and 33, which maybe we haven't gotten to yet. I don't even
09:47:19 25 know. But that's the problem that we run into. And

1 frankly, what brought this to a head for Summit is that we
2 had a meet and confer on law enforcement privilege with
3 colleagues, with counsel from Ropes and Gray.

09:47:35 4 We had a discussion about law enforcement privilege on
5 the December 21st call, and then all of a sudden we started
6 getting letters about law enforcement privilege from another
7 Defense counsel. And it's that type of issue that is an
8 inefficiency that I think some organization could render.

9 SPECIAL MASTER COHEN: I just have to pause
09:47:52 10 and note that when you're sitting here on the bench, you
11 really see these chandeliers waving back and forth, which is
12 what happens because this building is, you know, built to
13 move with the wind. And so they're really shaking today.

14 COUNSEL: It's that tsunami of e-mails.
09:48:11 15 (Laughter.)

16 SPECIAL MASTER COHEN: I was in this building
17 when the earthquake in Washington D.C., which damaged the
18 Washington Memorial occurred, and these were moving like
19 crazy all the way over here. But, if you ever see a Judge
09:48:25 20 up here kind of looking around, you know what it is.
21 They're really shaking today.

22 Go ahead.

23 MS. WU: Special Master Cohen, this is Laura
24 Wu for McKesson.

09:48:33 25 I wanted to address a couple points that Ackerman

1 raised and echo what everyone has said. We all welcome
2 coordination. We can all do better. But I think the
3 parties are trying very hard on both sides, and what I want
4 to say specifically in response to law enforcement privilege
09:48:50 5 issues is as you've seen from our submissions, McKesson, for
6 the distributor Defendants, has taken the view on these
7 issues for months. There are other members of the Defense
8 group for manufacturers and for the retail pharmacies who
9 are also involved. So having some different voices in the
09:49:09 10 communications is necessity -- necessitated by the Defense
11 group.

12 I can put my hand up and say I'm happy to take all of
13 the initial e-mails on law enforcement privilege, but I want
14 to assure the Plaintiffs and Mr. Ackerman in particular that
09:49:26 15 we are coordinating. And I'm well aware of the calls that
16 Mr. Ackerman has had with my friends at Ropes and Gray about
17 the law enforcement privilege. Just because of scheduling,
18 I haven't been able to be on every single call, but answer
19 as to any Defendant is an answer as to all Defendants. And
09:49:43 20 so if we get an answer to resolve an issue, we all take note
21 of that and don't follow up. And the fact that I've put
22 letters into the Special Master on law enforcement privilege
23 simply indicates that a cross cutting legal issue remains
24 open as to all Plaintiffs.

09:50:00 25 SPECIAL MASTER COHEN: So -- look, we all

1 agree that there's room for improvement. I also think that
2 it is some organic and sometimes the issue is going to have
3 to come up and then everybody says, "Wait a minute. This
4 isn't working as well as it might. Let's figure out a
09:50:15 5 better way to deal with it."

6 Again, I agree that you need to meet and confer. What
7 I'd like to do is kind of having a showing of hands, who are
8 the people that are going to volunteer to sit down and
9 specifically address this issue of coordination to try to
09:50:30 10 figure out ways to improve it, both right now and going
11 forward in Track Two? Because we're all going to try and
12 modify the Court's orders, the deposition protocol, the case
13 management order, and everything else to deal with issues
14 that come up over the last ten months that can be made
09:50:45 15 better.

16 So I want to know who it is that's going to be talking
17 on this?

18 MS. ROITMAN: Hi, Special Master.

19 I'm happy to take the lead -- Sarah Roitman, along
09:50:56 20 with Donna Welch, on behalf of the manufacturers, and
21 welcome participation from anybody else.

22 MS. WU: Laura Wu. We all join for the
23 distributors.

24 SPECIAL MASTER COHEN: Great.

09:51:01 25 MR. ACKERMAN: Mr. Pifko and I will handle for

1 the Plaintiffs. As Ms. Singer is well aware, we have a rule
2 that if you volunteer something, you have volunteered to do
3 it, so.

4 SPECIAL MASTER COHEN: Okay.

09:51:09 5 So thank you all for volunteering. Everybody here,
6 and I, appreciate that might make things easier going
7 forward. It's not going to cure all the problems but maybe
8 it will iron some things out in advance. So thank you.
9 Okay.

09:51:29 10 Agenda Item 125 has to do with the Bio Immersion Trip.
11 I sent out e-mails directing Plaintiffs to produce
12 documents, and I believe that all of the Plaintiffs have
13 since responded, saying essentially that they have done so.

14 I have this as resolved for today's purposes. It's
09:51:57 15 not the ultimate issue but the discovery aspect of it. And
16 so I wasn't going to spend any more time on it. Does want
17 to address that?

18 MS. ROITMAN: Special Master Cohen, this is
19 Sarah Roitman. I'm happy to direct that's fine with us. We
20 were the ones who put on the agenda --

21 COURT REPORTER: I'm sorry I'm having a hard
22 time knowing who is speaking.

23 MS. ROITMAN: Of course. My apologies.

24 That's fine with us. We appreciated your ruling in
09:52:26 25 terms of asking Plaintiffs to provide responsive information

1 that we can assess their claims. Unless I missed it, I
2 don't think we've heard from Summit, but I certainly could
3 have missed a response.

4 In the meantime, we're reviewing the documents and
09:52:39 5 trying to find them in the productions and I'm -- there's
6 nothing further on this topic for us at this point.

7 MR. WEINBERGER: Peter Weinberger on behalf of
8 Plaintiffs.

9 I agree that there are -- there's more work to be done
09:52:59 10 on this issue. There's nothing ripe for today. But I do
11 want to point out that we have received responses by January
12 7th, per your e-mail from Allergan, Purdue, and Mallinckrodt
13 but did not receive any responses from Teva or Janssen, and
14 I name these Defendants because they are the ones that
09:53:31 15 are -- that appear to be implicated by the Bio Immersion
16 documents, testimony, because they were board members of
17 Bio.

18 So I just want to point that out and hope that we will
19 be receiving something from those Defendants soon.

09:53:55 20 SPECIAL MASTER COHEN: All right.

21 So I've heard Teva, Janssen and Akron mentioned as
22 parties that may not yet have responded, and I saw
23 Plaintiffs getting up when Akron's name was mentioned. So
24 let me get that first.

09:54:06 25 MR. ACKERMAN: This is David Ackerman.

1 Summit and Akron both responded on January 7th to
2 advise that they had no awareness of the trip.

3 MR. REED: Special Master Cohen, Steve Reed
4 for the Teva Defendants. Steve Reed for the Teva
09:54:22 5 Defendants.

6 So on December 17th, we submitted a letter to the
7 Court informing the Court that Teva is not a member. The
8 assertion that it's a member of the Bio executive committee
9 is simply inaccurate.

09:54:35 10 We represent to the Court that we're not member of
11 Bio. We're actually not alleged to have been a member of
12 Bio. In the initial letter, there's reference to a former
13 CEO of Teva, who left the company years ago, who is
14 currently involved with Bio, but there's no connection
09:54:51 15 whatsoever to Teva. So I think we've actually answered the
16 question.

17 I don't know what more we can say other than the
18 people we said aren't involved don't have knowledge.

19 SPECIAL MASTER COHEN: Okay.

09:55:02 20 MS. LUCAS: Amy Lucas for Janssen. We
21 produced documents on the deadline and sent them a
22 production letter, and we don't have a privilege log. We're
23 not withholding anything. Our understanding is that the
24 order didn't require a written response beyond the
09:55:20 25 production, but if you'd like representation that we

1 received --

2 MR. WEINBERGER: I can address that. I think
3 the order -- first of all, I haven't seen the Janssen
4 production and part of the problem is that as opposed to
09:55:36 5 responding directly to and putting a subject line on the Bio
6 Immersion issue, Allergan, perhaps Janssen also, simply
7 produces the documents as in the normal course as part of
8 document production and doesn't designate the subject line
9 that indicates that this is a response to this particular
09:55:59 10 issue.

11 So that was clarified by Donna Welch with respect to
12 Allergan yesterday, and I -- my sense is that probably
13 Janssen did not designate a subject line that indicated to
14 us that was a response. That's Number 1.

09:56:17 15 Number 2, as I understand your order, they were to
16 identify the individuals who either participated in or
17 received information regarding the Bio Immersion trip. That
18 may or may not be revealed in documents. And so I sent a
19 letter or an e-mail I think yesterday, I think to the entire
09:56:44 20 group of potential Defendants here saying you have a
21 responsibility to give us the names of the individuals.
22 Mallinckrodt's named an in-house counsel under letter, and
23 in response to that e-mail, they've identified that person
24 for us, and I appreciate that.

09:57:00 25 So I think there is a written response required.

1 MS. ROITMAN: Special Master Cohen, if I may
2 respond.

3 SPECIAL MASTER COHEN: This is Sarah Roitman.

4 MS. ROITMAN: A couple things on that point.

09:57:13 5 So first with respect to Summit, we appreciated
6 Summit's response. If I recall, I think the response was
7 that their in-house counsel or external counsel weren't
8 aware of the trip beforehand.

9 Yesterday you issued a follow-up ruling, which we
09:57:27 10 understood to be asking any Plaintiffs whose employees or
11 representatives communicated with Bio or Leaders' Quest
12 about the trip, for those responsive communications to also
13 be produced. And that was the piece that I don't think
14 we've heard yet on Summit, although I'm happy to be
09:57:45 15 corrected if I'm wrong about that.

16 With respect to Mr. Weinberger's point about
17 Defendant's responses, I think here your order was very
18 clear that Defendants were required for any employees that
19 communicated with Leaders' Quest or were on the working
09:58:03 20 group, that we had to produce responsive documents.

21 It sounds like all the Defendants have done that. I
22 don't think that there was a requirement to specifically
23 identify either by name or Bates number those documents
24 because Plaintiffs already have them.

09:58:18 25 And the reason why I think both sides agree with that

1 was because when Plaintiffs provided us with their responses
2 yesterday, Cleveland and Cuyahoga, they did it the same way
3 that we did it of saying those documents have been produced
4 and they're now kind of in your hands and you can look for
09:58:34 5 them.

6 So we'd ask that if there's any ruling with respect to
7 any additional information that we have to provide, that it
8 just be reciprocal.

9 SPECIAL MASTER COHEN: You know, y'all can
09:58:44 10 make it easy for each other or hard for each other. And I
11 get there are tactical reasons why you might want to make it
12 hard for each other. I don't really like it. I would
13 prefer y'all make it easy for each other. One way to do
14 that -- and by the way, it makes it easier for the Court --
09:59:00 15 is that when you're sending e-mails to each other about a
16 specific topic -- and we've said this before, but I'm
17 reminding everybody -- that the subject line should be
18 specific so that everybody knows that a response to, for
19 example, the Bio Immersion Trip, is in fact a response to
09:59:15 20 the Bio Immersion Trip and not just one of the, quote, MDL
21 documents. That's Part 1.

22 Part 2, again, you can produce the documents and say,
23 "Oh, they're in there somewhere. We've responded. Go find
24 it," or in an e-mail or a letter, you can say, "We've
09:59:32 25 responded. Here's how we've responded, and here's what the

1 response says."

2 The latter is easier for everybody and doesn't add
3 much time. In fact, it will save everybody time because
4 even though it takes you five minutes to do it upfront, it's
09:59:46 5 going to save three hours of looking at stuff later on.

6 So I'm directing everybody going forward, as much as
7 possible, with every issue, that when these things come up,
8 you should identify for each other, as much as you can, the
9 response; the responsive documents, responsive people, the
10:00:03 10 response to the issue. All right?

11 What I'm hearing, I think, is that everybody says,
12 "We've responded fully," except that people are still trying
13 to find it. So I'm going to ask Plaintiffs to say, "We're
14 not sure that we have this information. Please tell us and
10:00:20 15 show us where it is." I'm going to ask Defendants to say,
16 "We're not sure we've got this particular information. Show
17 us where it is." Sounds like there's a very small increment
18 that I'm talking about right now. I know this is a little
19 bit of a side show we're talking about, but what I'm saying
10:00:38 20 is a global issue that has -- that has to be put into place
21 with respect to everybody going forward. Okay?

22 MS. ROITMAN: Thank you.

23 MR. WEINBERGER: Thank you.

24 But I do think we need some clarification. Perhaps I
10:00:54 25 misread your January -- your December 24th order. But, you

1 know there may be people on the Defense's side who received
2 information regarding the Bio Immersion Trip and its
3 planning who have not -- who did not create a document with
4 respect to that.

10:01:16 5 And what I'm hearing is that they don't believe that
6 it's within the ambit of your order to identify those
7 people. I don't read your order that way. It says --

8 SPECIAL MASTER COHEN: I don't either.

9 MR. WEINBERGER: Okay. Thank you.

10:01:34 10 SPECIAL MASTER COHEN: So if there's
11 information along those lines that you don't think you've
12 received, you need to identify that. Okay.

13 So far we've talked about easy agenda items. I think
14 we're moving into not so easy. The reason I say that is
10:01:52 15 because the status report that was submitted to Judge
16 Polster had a lengthy section that dealt with IQVIA
17 productions. And, of course, I think it was December 27th,
18 we were all on the phone together, and I entered a very
19 specific, I thought, order having to do with IQVIA
10:02:17 20 production.

21 Having read the status reports submitted to Judge
22 Polster, I think there are two aspects to what comes under
23 the rubric of IQVIA production. And I say rubric because
24 IQVIA production may not be only IQVIA as an entity. And
10:02:36 25 we'll get to that.

1 But, nonetheless, the two aspects seem to be first,
2 data, and then the second aspect, documents that have to do
3 more with auditing rules that IQVIA might have played or
4 other entities might have played for the benefit of the
5 Defendants. So I want to deal with them separately.

6 On December 27th, I think we were only dealing with
7 data. And I made very clear what it was that I wanted the
8 Defendants to do. Here's my understanding. You can tell me
9 if it's incorrect and where we need to go from here.

10 MR. WEINBERGER: Before you go there, I have
11 an update that may shortcut --

12 SPECIAL MASTER COHEN: Happy to get shortened.

13 MR. WEINBERGER: Okay.

14 Just before midnight last night, Evan Janush and I
15 received a letter from IQVIA's counsel, Patrick Oot of
16 Chicardi.

17 SPECIAL MASTER COHEN: Sorry. Who is it?

18 MR. WEINBERGER: Patrick Oot, O-O-T.

19 This is a gentleman who we've been dealing with over
20 the last number of months in response to subpoenas that
21 we -- subpoena we issued to IQVIA, IMS, et cetera. And
22 he did respond to two questions that I put in the status
23 report and were part of a letter that was sent to him and
24 that is whether or not the Nationwide Exponent data that was
25 produced by Allergan that appears to be applicable to all

1 opioids sold in the marketplace by all Defendants since
2 1997, whether or not that contains or could contain data
3 fields which would include the names of the pharmacies that
4 dispensed or distributed the drugs, and/or de-identified
10:04:45 5 patient level data or other patient identifiers. And
6 according to a letter that he sent to us, exponent does not
7 identify those two fields.

8 SPECIAL MASTER COHEN: The moral of the story
9 being you've got everything there is to get?

10:05:04 10 MR. WEINBERGER: That appears to be the case.
11 We intend to communicate further with him to assure
12 ourselves that there isn't some other data source that
13 contains this information, but yes, with respect to what
14 Allergan has produced, that was ordered by -- from IQVIA,
10:05:25 15 which is exponent data, I think we have everything that
16 we've asked for.

17 SPECIAL MASTER COHEN: So more broadly, the
18 order that I issued on December 27th, is there anything
19 left?

10:05:38 20 MR. WEINBERGER: Well, there are other --
21 there are several other databases, IQVIA databases that we
22 are -- we continue to meet and confer about, and I don't
23 really think at this point we need your help in that regard.

24 SPECIAL MASTER COHEN: Okay. That's fine.
10:05:56 25 Any other -- anybody else need to weigh in on that?

1 Sounds like this is either resolved or there's nothing to
2 resolve at this point. Okay.

3 Then there's the second half, which I understand less
4 well. Did you want to say something, Mr. Hanna.

10:06:18 5 MR. HANNA: Your Honor, did you move off of
6 the data issue?

7 SPECIAL MASTER COHEN: I did unless you -- we
8 need to go back to it.

9 MR. HANNA: There is an issue with respect to
10:06:26 10 whether --

11 SPECIAL MASTER COHEN: One second. Can you
12 please identify yourself for the Reporter and also pull the
13 microphone a little closer. Thank you.

14 MR. HANNA: Is that on? There is an issue
10:06:45 15 with respect to the authentication of that data,
16 specifically whether the other co-defendants will
17 essentially admit the authenticity of the Allergan produced
18 material.

19 SPECIAL MASTER COHEN: Why don't you deal with
10:07:10 20 that by asking them -- we don't need to do it right now. I
21 understand it's an issue, but it sounds like that's
22 something you can pursue outside of this meeting. And if
23 there's a problem, you can come back to it.

24 MR. HANNA: Sure. I just wanted to put on the
10:07:23 25 record that that issue is absent.

1 SPECIAL MASTER COHEN: Okay. Thank you. So
2 on December 27th, we only dealt with the data aspect. I
3 think the other aspect kind of hearkens back maybe to
4 earlier rulings by the Court or me, which I will need to be
10:07:41 5 somewhat reminded of, and I guess I'm not quite sure where
6 to start.

7 I think that this ultimately is something that if I
8 understand what the issue is, it's going to have to be
9 decided by the Court. When I said the Court, I mean Judge
10:07:58 10 Polster.

11 I guess, Plaintiffs, you want to start?

12 MR. WEINBERGER: Sure.

13 This does hearken back to the hearing of November 20th
14 and the order that was issued by Judge Polster on the
10:08:11 15 November 21st, Document 1147. And broadly speaking, it has
16 to do with the production by the Defendants of SOMS-related
17 information, which includes audits that were performed
18 either in-house or by third-party vendors. And we have, as
19 part of the subpoena that we issued on IQVIA, we asked IQVIA
10:08:50 20 to independently produce any documents associated with their
21 divisions that provided SOMS-related consulting services to
22 any of the Defendants in this case.

23 Now, going back to the November 21st order, the Court
24 ordered in general that all SOMS-related information should
10:09:18 25 be produced forthwith and spoke to the issue of

1 attorney/client privilege in that order. We have not
2 received any documents from IQVIA with respect to this
3 issue. But, I think the issue has come to the forefront
4 with particularity with respect to a conversation that took
10:09:52 5 place at the last discovery conference.

6 And so I think that -- in some respect, this has to do
7 with, I think, Item 122 of the agenda, which I think covers
8 this. And that is the disclosure by Cardinal's counsel last
9 Thursday that there's -- there was a document discovered in
10:10:22 10 the offices of, or files of their in-house counsel that they
11 claim to be privileged, which we believe, based upon the
12 description, may be an audit performed by one of the
13 divisions of IQVIA, Cegedim Dendrite on behalf of Cardinal.

14 And this -- this in part is within the scope of
10:10:57 15 documents that we are requesting that the Defendants either
16 produce, or if they don't have in their possession, that
17 they ask IQVIA to produce -- for them to produce to us.

18 This document that was disclosed last Thursday was not
19 on a privilege log and has now been placed on a privilege
10:11:27 20 log, and I believe the document has been produced to you for
21 in camera inspection.

22 We know, as a general matter, that with respect to
23 SOMS documents, which are in the possession of all the
24 Defendants and which we have requested in discovery, that
10:11:46 25 there is -- there has been privileges asserted with respect

1 to many of those documents. And so it's our position that
2 this issue of privilege is now in the forefront, and that
3 the way to deal with this in the first instance is to deal
4 with this particular document that you are currently -- that
10:12:15 5 you currently have in your possession in camera.

6 SPECIAL MASTER COHEN: With everything that
7 you said, the thing that concerns me most was that the
8 document was only recently produced.

9 MR. PYSER: Special Master Cohen, I can speak
10:12:25 10 to that. This is Steven Pyser for Cardinal Health.

11 I believe that the document that is being referred to,
12 although I would certainly want to confirm this, I believe
13 the document that's being referred to is actually Agenda
14 Item 84. And the reason it was not obvious is because it
10:12:49 15 was from a file of an attorney who was not a custodian in
16 this litigation.

17 So until this issue arose as a specific request,
18 please go look for this information outside the scope of
19 anywhere you've ever looked before. And we had narrowed the
10:13:07 20 scope as you do in every single occasion of what custodians
21 you're going to do, what searches you're going to do, that's
22 not outside the norm. We had no idea this document existed
23 until we went to try to find it in particular.

24 So having done that, we've now presented it to the
10:13:24 25 Court in camera, and I think the distinction here is that

1 the Court's order of November 21, 2018, Document 1147,
2 states that the Defendant shall not interpose
3 attorney/client privileges as a reason for not producing
4 discovery of all details of their SOMS.

10:13:49 5 We have produced discovery of all details of our
6 Suspicious Order Monitoring System. What we do not believe
7 that the Court's order does is say if that you're in a
8 litigation, or reasonable anticipation of litigation, and
9 lawyers in response to that litigation are working with
10:14:08 10 consultants to assist them in their legal work, that that is
11 somehow waived because it also concerns Suspicious Order
12 Monitoring.

13 SPECIAL MASTER COHEN: Well, I agree with you
14 that it's not automatically waived because it's -- because
10:14:22 15 it has to do with SOMS. The attorney/client privilege
16 isn't -- it isn't eviscerated because it has to do with
17 SOMS.

18 MR. PYSER: Thank you, your Honor.

19 SPECIAL MASTER COHEN: Having said that, I
10:14:32 20 want to be clear, it seems to me that there's a category of
21 documents, not just for Cardinal but for everybody, at least
22 every distributor, from what I am now beginning to gather
23 that has to do with audits, where distributors perhaps in
24 the 2006-to-2008 time frame dealing with what DEA was doing
10:15:00 25 at that time were obtaining assistance from outside

1 entities, from third parties. Dendrite, I can't
2 pronounce -- Cegedim, whatever it is, others --

3 (Laughter.)

4 SPECIAL MASTER COHEN: -- and it seems like
10:15:14 5 some of those documents weren't produced for the reasons
6 that you just explained; that is to say the agreed-upon
7 search terms and the agreed-upon custodians did yield hits.
8 It's clear to me, given what I've seen, that those documents
9 are extremely relevant. They may be protected by
10:15:33 10 attorney/client privilege but they're extremely relevant and
11 at the very least, need to be made part of the privilege
12 log. So I'm directing all parties, distributors and
13 manufacturers and everybody else, that you need to go
14 looking for -- and I'm not sure how to do it. You all can
10:15:50 15 figure out the best way -- you need to go looking for
16 documents that were created by third parties or you, in
17 connection with working with third parties, having to do
18 with auditing or helping with, you know, as broadly as -- I
19 can come up with different phraseologies, but the point is
10:16:15 20 to construe it broadly -- addressing the SOMS, addressing
21 Suspicious Order Monitoring Systems and the related due
22 diligence, to the extent there are third parties that are
23 working with any party in this case, any Defendant in this
24 case, where they're saying here's what we suggest you do,
10:16:34 25 here's how you can improve it, whatever it is. If y'all --

1 if the Defendants were getting help from an outside party
2 having to do with the running of the SOMS, due diligence,
3 anything like that, those documents need to be found and
4 either produced or put on a privilege log. And if the
10:16:57 5 Defendants have a concern about or Plaintiffs have a concern
6 about making sure that the mechanics of the Defendants doing
7 that is appropriate, then you need to meet and confer.

8 I'm not going to suggest the best way because you're
9 way more expert in figuring how to do what I just said. Any
10:17:17 10 questions? Counsel?

11 MR. WEINBERGER: A comment if I may. Peter
12 Weinberger.

13 These documents are not only relevant. They've been
14 in our request for production of documents since the very
10:17:27 15 beginning of this litigation. So to suggest that they are
16 not a part of the search, they couldn't be found with search
17 terms, this document couldn't be found with search terms or
18 that it wasn't a custodian that had been designated is
19 simply not an answer to the question as to why this document
10:17:48 20 was produced so late in this litigation.

21 So I assume then with respect to this one document
22 that we're at some point going to proceed forward with
23 determination of privilege and will need guidance as to
24 what -- whether we need to file a motion to compel if you
10:18:20 25 rule it is privileged or exactly how we're going to get that

1 in front of you and/or the Court because I think -- again, I
2 think this has relevancy and ramifications across the board,
3 both as to all the Defendants in this case.

4 SPECIAL MASTER COHEN: Well, we're bouncing
10:18:40 5 around amongst topics, but what are you proposing that is
6 different than what is already in place with regard to the
7 review of the Cardinal document that was recently produced
8 in camera?

9 MR. WEINBERGER: You know, obviously, the next
10:18:59 10 step is for you to decide whether or not it should be
11 produced. And then I guess we'll go from there.

12 SPECIAL MASTER COHEN: Okay. Mr. Fuller.

13 MR. FULLER: Yes. Special Master Cohen, Mike
14 Fuller on behalf of the Plaintiffs.

10:19:12 15 With the Defendants filing so many privilege logs
16 these days, can we have a separately designated privilege
17 log for these specific documents you're referring to?

18 As the Court is aware, we had an 80 -- excuse me,
19 48,000 document privilege log come in to Cardinal. These
10:19:31 20 could be separated out into their own privilege log, that
21 would be helpful.

22 SPECIAL MASTER COHEN: Well, there's a way to
23 do it. Just thinking off the top of my head, to identify
24 any such document just with the word audit. I mean that
10:19:43 25 kind of flags it. In other words, use a keyword somehow in

1 the privilege log so that you know those documents are the
2 ones that are being produced responsive to this directive.

3 MR. FULLER: That would solve part of the
4 issue.

10:20:03 5 MR. REED: Special Master Cohen, Steve Reed on
6 behalf of Teva Defendants.

7 Just one point of clarification, and Ms. Singer is in
8 the courtroom so she can correct me if I'm wrong, but in her
9 noting of this issue, on January 7th, her note to the Court,
10:20:18 10 she noted, asserted that the Defendants have failed to
11 comply with these requests, except for Teva. My
12 understanding is that Teva has complied and that the
13 Plaintiffs are not expecting anything from us. So I wanted
14 to make sure that was clear on the record. And if Ms.
10:20:34 15 Singer disagrees, perhaps we can raise it now.

16 MS. SINGER: This is Linda Singer. I am
17 without a microphone over there. So I think you're asking
18 if I confirm for the record that Teva had complied with the
19 Suspicious Order Monitoring and charge back production?

10:20:59 20 MR. REED: I just want to make sure that I'm
21 reading your note to the Court correctly. You carved out
22 Teva. I'm happy to see that. I just wanted to make sure --

23 MS. SINGER: I think Mr. Reed just wanted me
24 to say something nice about his client on the record, which
10:21:10 25 I am happy to confirm.

1 (Laughter.)

2 MR. REED: Thank you.

3 MR. WEINBERGER: One other issue on behalf of
4 Plaintiffs.

10:21:21 5 Within the ambit of the -- or the scope of these
6 documents, it should be contracts between the third parties,
7 third-party vendors and the Defendants because the contracts
8 will define the scope of the work.

9 SPECIAL MASTER COHEN: Right.

10:21:40 10 MR. WEINBERGER: And to my knowledge, there
11 hasn't been a robust production of those contract documents,
12 and that's one of the things that we had asked IQVIA's
13 counsel to produce for us.

14 And their response was well, why don't -- this was
10:22:03 15 communicated to all of us, including the Defendants because
16 we had a joint call with counsel for IQVIA, and he suggested
17 why don't you -- one of the Defendants have the people in
18 their organization who dealt with the IQVIA companies to be
19 identified, and they can contact our people at IQVIA, who --
10:22:31 20 with whom they had contact and get those documents produced
21 to the extent that the Defendants have not produced them.

22 SPECIAL MASTER COHEN: So is there a subpoena
23 to IQVIA?

24 MR. WEINBERGER: Yes.

10:22:41 25 SPECIAL MASTER COHEN: So the production of

1 these documents has to be from the Defendant if they have
2 them. And to the extent the Defendants don't have them and
3 the subpoena covers it from IQVIA, the Defendants are
4 required to direct IQVIA to produce them, including
10:23:00 5 contracts.

6 MR. WEINBERGER: Thank you.

7 SPECIAL MASTER COHEN: Anything else on this?

8 MR. FULLER: Yes. Special Master Cohen,
9 again, Mike Fuller on behalf of the Plaintiff, PEC.

10:23:17 10 This belies a bigger issue, and you pointed out your
11 largest concern is that --

12 SPECIAL MASTER COHEN: Go ahead. I thought it
13 was pretty big already.

14 MR. FULLER: Your biggest concern was that
10:23:31 15 this document was never identified previously. This is not
16 the first time this has happened with Cardinal, and if I can
17 lay the record and the groundwork for the Court, sticking
18 with -- may I approach, your Honor?

19 SPECIAL MASTER COHEN: Yes. You don't need to
10:23:46 20 ask that.

21 MR. FULLER: Sticking with the document from
22 Dendrite identified as early as Monday, this goes back to
23 discovery answers to binding discovery as well as written 30
24 (b) responses where the Defendants were asked to identify --

10:24:10 25 SPECIAL MASTER COHEN: Before you proceed, I

1 note that you just gave me two documents for the record.
2 They're both marked highly confidential. And so I just want
3 to remind you that we're on the record and you should be
4 careful about your references.

10:24:23 5 MR. FULLER: Fair enough, your Honor. The:
6 First document is a written response to a 30(b) from October
7 18, 2018. The second document is a supplemental response to
8 the combined discovery from November of this -- or last
9 year, November 30th. If you review the highlighted
10:24:44 10 sections, it indicates what the Defendants say that Dendrite
11 did, and I don't think it's highly confidential that what
12 they've claimed is that Dendrite, at least up until this
13 point, only provided investigations of on-site pharmacies.
14 They've never, until this document came to light, even
10:25:07 15 identified Dendrite as providing SOM services.

16 As the Court has already -- is already aware, they
17 filed a 48,000-document privilege log that never includes
18 this item.

19 A companion issue that's before you is Item 128, which
10:25:30 20 is I think next on the agenda. And here's what causes the
21 Plaintiff's side the issue. It's not that -- in 128, this
22 dealt with additional documents that were a retrospective
23 lookback analysis that Cardinal conducted based on its 2008
24 memorandum of understanding with the federal government.

10:25:57 25 We now discover that that was actually conducted and

1 you ordered it as production. We have moved and what's
2 pending before the Court for your Honor to compel the
3 Defendants to respond to this discovery request that asks
4 about retrospective analysis. It was never identified
10:26:18 5 previously. Your Honor sent an e-mail that says look, you
6 have the information now; that should be sufficient. The
7 Defendants respond and this is what's telling. Defendant's
8 response says that, "Look. You've ruled. We're going to
9 produce it, coming this Friday, January 11th. Although we
10:26:38 10 do not believe the 2009 analysis is actually responsive to
11 the specific request and the topic."

12 That's where the problem comes. Same thing with
13 they're claiming with Dendrite. They're not recognizing
14 these documents as being responsive to anything. They're
10:26:59 15 literally talking about an 18-month analysis of their
16 Suspicious Orders going to 2008 until 2006 as agreed to do
17 by the MOA.

18 You're talking about a Dendrite document that if --
19 and I can provide the Court a copy. That mimics what was in
10:27:21 20 Cardinal's file as the same review that Dendrite did for
21 Master Pharmaceutical. Apparently that wasn't privileged.

22 It's highly relevant, has a huge impact on Plaintiff's
23 case. And I apologize. I should have brought the next
24 document up.

10:27:42 25 SPECIAL MASTER COHEN: What is the document?

1 This is the pharmaceutical's -- excuse me -- Master
2 Pharmaceutical's Dendrite Report that is analogous, you
3 believe, to the Cardinal --

4 MR. FULLER: Correct.

10:27:55 5 SPECIAL MASTER COHEN: All right.

6 And you just said you don't believe that this was
7 designated as privileged in the Master's case. Why do you
8 say that?

9 MR. FULLER: I don't know if it was designated
10:28:05 10 in the Master's case. I know it got produced at Cardinal
11 because Cardinal produced it to us. If there was any
12 privilege --

13 SPECIAL MASTER COHEN: Produced to Cardinal by
14 whom?

10:28:14 15 MR. FULLER: I do not, your Honor.

16 MR. PYSER: Special Master, Cohen, I note --
17 this is Steven Pyser for Cardinal --

18 SPECIAL MASTER COHEN: Please identify
19 yourself for the record.

10:28:21 20 MR. PYSER: Steven Pyser for Cardinal Health.

21 Sorry. The placement of the microphone prohibits
22 standing up.

23 The document that I was just handed, at least which I
24 think is a Master Pharmaceutical document, does not have a
10:28:33 25 Bates number. So the Plaintiffs reproduced it, and I,

1 sitting here today, can't speak to the multiple noting --

2 MR. WEINBERGER: I have a copy.

3 COUNSEL: Thank you.

4 MR. FULLER: Your Honor, the Bates Number for
10:29:04 5 that is CAHMDL2804, 02481524.

6 Your Honor, the next document --

7 MR. PYSER: I would also note, your Honor --

8 and this goes for the other documents that have been

9 provided just now to Special Master Cohen. This document,

10:29:26 10 because it doesn't have a Bates number also doesn't have a

11 confidentiality stamp that likely went along with it. So I

12 would ask that for all the documents that counsel is now

13 presenting to the Court, that whatever their confidentiality

14 marks were originally, that be respected by the Court and by

10:29:41 15 the parties.

16 SPECIAL MASTER COHEN: Agreed.

17 But still, I just want to get back to the question of

18 do we know whether this Master's document was --

19 MR. FULLER: We do not know how it got to

10:29:57 20 Cardinal, your Honor.

21 SPECIAL MASTER COHEN: Mr. Pyser, do you know.

22 MR. PYSER: Sitting here today, receiving this

23 document, I can't speak to that.

24 SPECIAL MASTER COHEN: You've seen this

10:30:07 25 before?

1 MR. PYSER: This particular document?

2 SPECIAL MASTER COHEN: Yes. You know of this
3 document? I know of this document. I don't know how --

4 MR. PYSER: We believe it was an attachment to
10:30:14 5 one of the Plaintiff's submissions.

6 MR. WEINBERGER: And we refer to this document
7 at the November 20, 2018, hearing before Judge Polster.

8 SPECIAL MASTER COHEN: Right.

9 MR. PYSER: But I would note that I can't
10:30:26 10 speak whatsoever to what Master's Pharmaceutical might have
11 engaged this company to do. I can only speak to what
12 Cardinal Health engaged them to do in context of that
13 engagement, who they were reporting to. And those are the
14 issues originally put before the Court and were complying
10:30:43 15 with the Court's order to produce certain documents.

16 So I -- you know, again, the Plaintiffs are coming
17 around to an issue where they've asked questions, we've
18 provided answers, witnesses, fact witnesses have testified,
19 identified documents. We are -- we are or have produced
10:31:03 20 those documents. It's going around and around where
21 we've already complied. And that's what we're getting at.
22 When Plaintiffs shift over now, I think we've shifted over
23 into Agenda Item 128, Topic 16. I think the Court had it
24 right in its e-mail when you said, "Okay. You've raised
10:31:20 25 this topic. A witness has testified on this topic. The

1 documents have been identified and will be produced on this
2 topic."

3 SPECIAL MASTER COHEN: Well, Plaintiffs'
4 concern, and it's legitimate and fair, is that it seems that
10:31:33 5 the document we're talking about is something that should
6 have been produced earlier, that it should have been
7 gathered by the net of previous discovery. And so I'll tell
8 you, and I'm pointing at everybody here, not just Defendants
9 and not just Plaintiffs, that the Court has made it very
10:31:59 10 clear to me, Judge Polster has said, "If you need to
11 sanction anybody, go ahead. You have the authority to do
12 that. If somebody isn't doing what they're supposed to do
13 or behaving inappropriately, you, David Cohen, have the
14 authority to sanction them, and I will address it then if
10:32:15 15 they appeal it to me, you know, using the appropriate
16 standards."

17 The reason I say that is because I'm extremely
18 reticent to do that, but we're getting into an area where if
19 it later turns out that the Defendants have not produced
10:32:34 20 documents that are central to this litigation and we all
21 know what that means, like if you see it when you know it,
22 you know it when you see it, there is going to be a problem
23 coming from me and/or the Court. And I want to make myself
24 very clear. Don't monkey around -- I said this before --
10:32:58 25 don't monkey around with parsing words. Critical discovery

1 needs to be produced from both sides, from both sides. And
2 the kind of document we're talking about now, which
3 according to Mr. Fuller, Cardinal said we don't think this
4 was covered, it's just wrong. It was.

10:33:29 5 MR. PYSER: To be clear, your Honor, that was
6 because of that particularized discovery request. Speaking
7 to the general production question, as to why certain
8 documents weren't picked up, I think the document that was
9 put before Special Master Cohen through our in camera
10:33:46 10 submission is a perfect example.

11 SPECIAL MASTER COHEN: I'm not talking about
12 that one right now.

13 MR. PYSER: And I can look into whether there
14 was a search term issue or a custodian issue, but I can
10:33:56 15 assure the Court there is no attempt, as you just said, to
16 monkey around. Where we find responsive documents, we are
17 producing, millions of them.

18 So I understand the Court's directive. We are
19 producing responsive nonprivileged documents, and we'll
10:34:12 20 continue to do so. If anything else is located, we will do
21 so.

22 SPECIAL MASTER COHEN: Right. And documents
23 that are responsive that are privileged need to be put on a
24 log.

10:34:22 25 MR. PYSER: Understood.

1 MR. FULLER: And, your Honor, just to complete
2 the record, Mr. Pyser -- well, I shouldn't point out
3 Mr. Pyser. Cardinal filed a response that said this
4 document isn't even responsive anyway. The testimony has
5 been that these documents would have been responsive to that
6 request; particularly by Mr. Reardon, who is in charge of
7 the Suspicious Order Monitoring Program up until 2007.

8 Then when we argued this issue previously before your
9 Honor over the phone, your Honor asked about two documents
10 that they did identify. This goes, again, to the 18-month
11 lookback; these reports that have to be produced on Friday.

12 They've produced the document by Mr. Rauch that
13 identifies the formulary he's going to use to run this
14 process. They identify the document at the end that was
15 provided to the DEA that said yes, we did the 18-month
16 lookback.

17 So they're claiming that the search terms triggered
18 the documents, set up the formulary, and the document that
19 says hey we did it but didn't trigger anything in the
20 middle. And Mr. Rauch testified he's the one that ran the
21 reports. So he was a custodian.

22 We've heard this issue it's not triggered by search
23 terms or it wasn't labeled as custodian. Your Honor heard
24 months of testimony and argument about how we had to rely on
25 the Defendants to identify who the likely custodians would

1 be. We were going on what they said for a lot of that.

2 Here we have -- and what's so concerning to us on our
3 side is we have two probably most significant documents, the
4 most significant point in time of this litigation, 2000,
10:36:05 5 2007, 2008 time frame, one doing a retrospective review of
6 Suspicious Orders and doing an analysis, the other
7 evaluating Suspicious Order Monitoring Systems that were in
8 place that, lo and behold, never made it to privilege log,
9 never got identified, and the company that did the analysis,
10:36:28 10 we weren't even told in written responses that that was the
11 type of analysis that they were doing. We had to discover
12 all of this on our own.

13 That's not the way this litigation should be ran.
14 It's just not, your Honor. And Mr. Pyser's response is,
10:36:47 15 with all due respect, your e-mail, Special Master, to us
16 yesterday was, "Well, look. You got the information now."
17 We had the information for 2007. But, when they entered the
18 MOU in 2012, was there another analysis that they did
19 looking back? We don't know because we haven't come across
10:37:08 20 that in discovery. But they should have to tell us that.

21 SPECIAL MASTER COHEN: All right. So about --

22 MR. FARRELL: Judge, Paul Farrell. One quick
23 thing.

24 I just want to emphasize this retrospective lookback
10:37:19 25 audit was a component of Cardinal Health's Memorandum of

1 Understanding and Agreement with the DEA for failure to
2 conduct, design, and operate a Suspicious Order Monitoring
3 System.

4 So what we're seeing is -- is Mr. Rauch testified he
10:37:40 5 performed that very analysis and gave it to in-house
6 counsel, and then it disappears and doesn't even show up on
7 a privilege log.

8 SPECIAL MASTER COHEN: All right. So --

9 MR. PYSER: Special Master Cohen, I would also
10:37:53 10 add just some of the issues, there are intersecting issues
11 here, many of them are covered, I believe, by Agenda Item
12 122, which Cardinal is preparing a written response, which
13 is Plaintiff's request for Cardinal Health to release
14 details of its Suspicious Order Monitoring System.

10:38:09 15 So some of this at least is issues that will be
16 addressed in writing, and Plaintiffs are raising now, which
17 is contrary to some of the agreement, but all of that said,
18 I'll repeat for the Court what I said before, which is look,
19 there's no monkeying. There's no hiding the ball. When
10:38:25 20 documents come up, we are producing those documents. We
21 can't produce documents that are not located whether through
22 research terms or custodians, and that applies to every
23 Plaintiff and Defendant in this case that, for example, when
24 the General Counsel has agreed look, his work is legal and
10:38:44 25 that's why it's been submitted to you because certain of

1 these documents are prepared in preparation for litigation,
2 there's -- they're on the log and we prepared them or
3 they're not custodian so they're not there, and that's the
4 agreement for all parties. So I don't think there's
10:39:00 5 anything you need here as we continue to search and continue
6 to produce whatever Plaintiffs ask so.

7 MR. FULLER: Your Honor, and Mr. Pyser's
8 correct. There is another issue that was put on the agenda
9 that was bumped to give them time to respond in writing.
10:39:17 10 That's not going to resolve this issue.

11 SPECIAL MASTER COHEN: No.

12 MR. FULLER: The issue is whether we can rely
13 on the discovery and the responses we're getting.

14 And I have to admit, I have not done a ton of
10:39:29 15 multi-district work, your Honor, but I hear repeatedly it
16 wasn't triggered by search terms or custodians. If we asked
17 for it in a request for production and you know about it or
18 your client knows about it, you have to give it. Why else
19 would we do the request for production?

10:39:44 20 SPECIAL MASTER COHEN: Yeah, I --

21 MR. FULLER: It's so contrary.

22 SPECIAL MASTER COHEN: I agree with your
23 proposition. Let me -- let me cut to this.

24 So first of all, with regard to Agenda Item 128, which
10:39:59 25 we've touched on, my original concern was I don't know why

1 we need to direct Cardinal to amend an interrogatory
2 response when you know the answer, but what has become clear
3 is that the request for the amendment to the interrogatory
4 is not simply to formalize something that you already know,
10:40:21 5 to include a document that you've already received, but to
6 ensure that there are other -- ensure you've received other
7 documents or know about other documents related to that that
8 haven't been produced.

9 So I'm going to grant the request Plaintiffs have made
10:40:38 10 for Cardinal Health to supplement its written responses to
11 Topics 16 and 18, and that will require Cardinal to ensure
12 it has produced the kind of documents that I was talking
13 about earlier having to do with audits and lookbacks and due
14 diligence and anything to do with the running or the
10:41:02 15 modification of Suspicious Order Monitoring Systems.

16 I again want to be clear the fire with which you are
17 playing right now is hot. Defendants need to make sure that
18 they do what I've directed because I really don't want to
19 come back and see the Court and myself be put in a position
10:41:27 20 to say, "Look. I told you and now you're in -- you're in a
21 troublesome spot."

22 MR. FARRELL: Special Master Cohen, these are
23 30(b)(6) topics that we asked for a deponent. They said
24 they would provide a written response. So what we're asking
10:41:43 25 is instead of getting more lawyer responses, is it possible

1 for us to have -- reopen the 30(b)(6) testimony, have your
2 Honor sit, and that we can inquire on the variety of topics
3 that we believe are incomplete?

4 We've raised this issue before. We're getting through
10:41:59 5 30(b)(6) testimony. We're not getting clean, clear answers,
6 and we're running out of time. So -- hold on. I'm not
7 done.

8 MR. PYSER: That was not the original
9 request --

10:42:09 10 MR. FARRELL: I'm not done.

11 MR. PYSER: -- written testimony. We will
12 provide in accordance with the Court's order. This has
13 already been ruled on once, and we now have a ruling to
14 provide the written answers to 30(b)(6) testimony. We will
10:42:24 15 do so. We shouldn't now go back and reopen other issues and
16 attack it from a different way that wasn't even part of the
17 briefing or the request from the Plaintiffs originally.

18 SPECIAL MASTER COHEN: The answer, Paul, is
19 not yet. If that happens, I want it to be after all the
10:43:12 20 documents are produced, responsive to what I just said. It
21 may happen.

22 On this topic, let me ask you now that we've gotten as
23 far as we have -- I think we're done for the moment -- to
24 what extent have I mooted the need for the parties to bring
10:43:43 25 this up at the status report tomorrow with Judge Polster?

1 Not saying you shouldn't, just asking where are we on this
2 so I can let the Judge know a little bit what to expect.

3 MR. WEINBERGER: I think -- I think you have
4 covered that part of our status report. There's still two
10:44:01 5 other sections. One has to do with SOMS-related issues and
6 charge back data with respect to the manufacturers, which is
7 an Agenda Item 69. But with respect to the first part of
8 the status report, I think we've covered that waterfront.

9 SPECIAL MASTER COHEN: Anybody else want to
10:44:23 10 weigh in on that specific question?

11 MR. REED: Special Master. Steve Reed for the
12 Teva Defendants.

13 I think in general, the parties, up until recently,
14 have observed an approach with the status reports to the
10:44:36 15 Judge that make sense, which is to report on the status of
16 the proceedings, which includes a general reference to the
17 status of the discovery proceedings.

18 They're taking place, as the Court directed, before
19 you. In recent reports, there's been a troubling trend
10:44:51 20 where the Plaintiffs seem to be trying to litigate the
21 issues that are still pending before you to Judge Polster
22 directly, in the hopes of getting a decision which preempts
23 the process and we think corrupts the process. It doesn't
24 allow for a proper development of the record and an
10:45:09 25 opportunity to argue for you to consider to make a

1 recommendation for us to decide whether to ask you to
2 formalize it, and for one of us to take it to Judge Polster
3 if it's ripe.

4 And so there was a lot of discussion earlier this
10:45:21 5 morning about how we can improve the process, make it more
6 efficient. I would say that's top of -- near the top of my
7 list, which is we should not be raising discovery disputes
8 that you haven't yet decided in a status report to Judge
9 Polster.

10:45:36 10 SPECIAL MASTER COHEN: Well, as a general
11 matter, I agree.

12 It was especially curious to me that lengthy
13 discussions in the status report actually didn't make
14 reference to some of the discovery -- Plaintiffs or
10:45:51 15 Defendants -- didn't make reference to the discovery rulings
16 I made on the topics. So I thought that it was an odd
17 presentation to the Court.

18 On the other hand, I think it's fair to say that the
19 status reports to the Court as a general matter have been
10:46:04 20 pretty vanilla and sometimes it's curious to me that the
21 parties aren't trying to fill in the Court a little bit more
22 on what's happening. Status reports sometimes last ten
23 minutes, and I'm left thinking I'm not sure what the
24 Judge just learned.

10:46:19 25 The status report doesn't have to be an asking for

1 resolution of issues, but it should probably be a bit more
2 thorough of a recitation of what the issues that are being
3 dealt with are.

4 So somewhere in the middle is, you know, a good place
10:46:32 5 to be. I also think that given where we are in the arc of
6 Track One, that it makes sense to me -- it didn't surprise
7 me that the parties are jumping up and down trying to get to
8 the end of things and bring things to the Court's attention
9 because there's a lot of tension, a lot of issues that are
10:46:49 10 needed. So I understand your point.

11 But it sounds like, getting back to my original
12 question, the Defendants don't think -- and I'm not saying
13 you shouldn't. I just want to make sure the Defendants
14 don't think that there's some issue that the court needs to
10:47:03 15 resolve tomorrow during the status call on this topic.

16 MR. REED: From the Defense's perspective,
17 there is not anything at this time.

18 MR. RICE: Your Honor, Joe Rice for the
19 Plaintiffs.

10:47:17 20 Everything that you've done this morning and
21 everything that's in our status report points to a problem
22 that I've raised with you with greatest of respect. There's
23 no way you can get this done by yourself. So we do think
24 that the concept of how we go forward should be part of our
10:47:41 25 discussion with the Judge tomorrow. Part of our status

1 report was to point out the magnitude of the task that the
2 Judge has put on you in dealing with all of the discovery,
3 thousands and thousands of privilege claims, and deadlines
4 that just await your ruling, and you just can't do it all.
10:48:06 5 It's not humanly possible, no matter how hard you try.

6 SPECIAL MASTER COHEN: I'm inhuman?

7 (Laughter.)

8 MR. RICE: Well, show it.

9 So we do think that some discussion tomorrow with the
10:48:19 10 Court in the status report addressing these issues is
11 appropriate, and we do intend to raise them.

12 SPECIAL MASTER COHEN: Yeah, that's fine. I
13 mean to tell you the truth, it's occurred to me that --
14 look, I know that this process has been very expensive for
10:48:33 15 both sides to have three Special Masters, but there's no way
16 around it that I've seen, and it's occurred to me that I
17 wouldn't mind getting some help. One way to do that is to
18 take some of the issues that I've had trouble getting to,
19 specifically the confidentiality and privilege log issues,
10:48:51 20 and giving them to other Special Masters or giving them to
21 Court Clerks. And we've begun to do that. It also occurs
22 to me maybe I need to hire somebody at a lower, at a lower
23 hourly rate, who can help me with that stuff.

24 And so maybe that's a -- I'm just throwing that out.
10:49:13 25 There may be other ideas to talk about. It's fine with me

1 if you address that issue with the Court tomorrow.

2 MR. RICE: Thank you.

3 MS. Birnbaum: Sheila Birnbaum for Purdue.

4 Mr. Rice, when you say you want to raise this, you're
10:49:26 5 raising it as an issue, do you have solutions that you want
6 to discuss before that, or is this a gotcha that you're
7 going to provide solutions that you haven't shared with
8 anyone else? And why don't we have a meet and confer about
9 whether there could be an agreement between the parties as
10:49:47 10 to what can be done instead of raising it in a vacuum
11 without solutions?

12 SPECIAL MASTER COHEN: So we're going to take
13 a 15-minute break, and during that time, I direct you and
14 Mr. Rice to meet and confer.

10:50:00 15 (Laughter.)

16 MS. BIRNBAUM: Maybe for ten minutes. We'd
17 like to take a break, too.

18 SPECIAL MASTER COHEN: All right. If -- it is
19 10 of. Let's come back at 10 after and we'll resume.
10:50:12 20 Everybody can take a break. Thank you.

21 (Thereupon, a recess was taken.)

22

23

24

25

1 MS. BIRNBAUM: Special Master Cohen.

2 Sorry we've been late. Mr. Rice and I had a
3 ten-minute confab which took a lot longer and was joined by
4 a lot of other folks.

11:13:41 5 I think from our perspective, the Defendant's
6 perspective, we are meeting after this hearing with the
7 Plaintiffs, and I think we would like to continue to discuss
8 coming up with a helpful solution to help you get through
9 these confidentiality issues. And I think if you give us a
11:14:05 10 little more time, perhaps we can come up with a joint
11 solution or if not, then we may come up with two solutions
12 to try to assist you in getting maybe more help for you to
13 help get us through this review of the confidentiality
14 communications.

11:14:29 15 SPECIAL MASTER COHEN: Okay. Thank you.

16 MR. RICE: I think it's fair to say that --
17 and correct me if I'm wrong, everybody who's in the room --
18 everybody recognizes that the efforts you're putting in
19 would still -- the task you've been given is going to
11:14:45 20 require some help. So I think we're united in trying to
21 figure out how to get this done, and I think everybody
22 recognizes the ramifications getting this done has on
23 getting this case reasonably ready for trial with existing
24 trial dates. So there will be other discussions we'll have
11:15:02 25 to have.

1 SPECIAL MASTER COHEN: Yeah, that's fine. I
2 appreciate your working together to find the solution to
3 help all of us together.

4 So I actually never needed reading glasses until I had
11:15:15 5 the agenda for this case --

6 (Laughter.)

7 SPECIAL MASTER COHEN: -- put in front of me.

8 Just to let you know, so I was just told during the
9 break that the Judge has a criminal matter. I think it's
11:15:28 10 probably a sentencing, but I'm not exactly sure what it is
11 -- at 1:00. That will probably run from 1:00 to 1:30. So
12 we will take a break then. I want to run pretty solid until
13 then. So we'll have our lunch break at 1:00.

14 This is taking a little longer than I anticipated so
11:15:44 15 far, but I also know that many of the topics we've addressed
16 so far are the bigger ones. There's kind of one or two more
17 big ones we have to address.

18 I was asked during the break if perhaps we can address
19 Number -- next, Number 84. Is that right, Jim?

11:16:07 20 MR. CECCHI: 102.

21 SPECIAL MASTER COHEN: Because people need to
22 get on planes. Somebody call off page what 102 is on.
23 There's a lot of rustling of papers.

24 MR. CECCHI: I think it's 6 but I'm not sure.

11:16:44 25 SPECIAL MASTER COHEN: Are you sure it's 102?

1 MR. CECCHI: 103.

2 SPECIAL MASTER COHEN: 103, top of Page 6.

3 These are Wal-Mart specific issues, and this comes under
4 the -- I don't want to do this very much. I don't want to
11:17:10 5 jump to previous agenda items because most of these are in
6 the nature of status reports, but my understanding as to
7 this one is that it kind of is moved back into the realm of
8 dispute and impasse, despite the fact that to this point,
9 everybody had been working together.

11:17:34 10 So, Jim, why don't you go ahead?

11 MR. CECCHI: Thank you, your Honor. James
12 Cecchi on behalf of the PSC.

13 We're addressing the Wal-Mart issues and the agenda
14 says to give a status report, and the report is that we are
11:17:48 15 at an impasse. And we're prepared to go through the issues
16 today. I have one of my partners on the phone.

17 The problem with the discovery from the Plaintiffs'
18 perspective is -- and it goes back to your Honor's comments
19 about parsing --

11:18:02 20 MS. BONOVIK: I'm sorry. I hate to
21 interrupt. This is Kelly Bonovich for Wal-Mart. And
22 because we've jumped out of order on the agenda, I just want
23 to make sure my colleague, who is handling this topic, is
24 going to be -- is on the call presently.

11:18:18 25 SPECIAL MASTER COHEN: And who is that?

1 MS. FUMERTON: Hi, Kelly. This is Tara
2 Fumerton. I apologize, Special Master Cohen, I was not able
3 to be there in person, but I am on the phone now and can be
4 prepared to address these issues. Although I'm a little bit
5 confused but never had a conversation with the Plaintiffs'
6 representative that's now speaking. So I'm not really sure
7 what's going to be discussed since we've just recently sent
8 them the letter to Plaintiff which we thought was a
9 continuation of our meet and confer process and --

10 SPECIAL MASTER COHEN: Tara, Tara, we're
11 having trouble hearing you here. We haven't had trouble
12 hearing the other folks on the phone. I'm not sure if
13 that's because you're not speaking directly into the phone.
14 But, the Court Reporter hasn't been able to get some of what
15 you've been saying.

16 MS. FUMERTON: Hi, Special Master Cohen. This
17 is Tara Fumerton. Is that better?

18 SPECIAL MASTER COHEN: Yes, it is. And I heard
19 what you said.

20 The essence of it was that you don't believe you've
21 spoken directly with the Plaintiffs' attorney, who's
22 speaking now, and that you recently sent something to the
23 Plaintiffs on these topics. And I'm not sure if you said
24 you don't agree that there -- that you're at an impasse.
25 Was that the last thing you said? I didn't really hear it.

1 MS. FUMERTON: Yes, that was the last thing I
2 had said that it was not my understanding that we had
3 reached an impasse. So this is all a little bit of a
4 surprise to me.

11:19:45 5 MR. CECCHI: Your Honor, I apologize for not
6 speaking personally to Tara. My more learned colleagues who
7 are taking depositions in the Wal-Mart case today were
8 speaking directly to her. We did receive a letter back
9 after the last hearing from your Honor where you told us to
11:19:57 10 continue meet and conferring. And we got that at 1:59 two
11 nights ago.

12 Our judgment is that the meet-and-confer process has
13 reached a conclusion, that we're not making productive
14 process. There's fundamental items. There's fundamental
11:20:12 15 requests for documents that they are parsing and limiting in
16 a self-serving way that we believe we need responses to.
17 And your Honor discussed some of those items in the last
18 hearing, and they're in our December 19th letter. Let me
19 just give you a few examples.

11:20:28 20 Altorex Software. They used Altorex Software in
21 connection with Suspicious Order Monitoring. It's a
22 program, as we understand it, that's even more powerful than
23 the Tableau Program, which your Honor, I'm sure, has heard
24 about.

11:20:40 25 They used it, for Suspicious Order Monitoring. They

1 manipulated data that was fed into it. We need the Altorex
2 native files so we can see what they were doing, when they
3 were doing it, how they were doing it, and what they were
4 doing it.

11:20:54 5 It's not controversial. We've asked for it. We don't
6 have it.

7 "Know your customer" documents. They initially told
8 us we don't do know your customer. We now found documents
9 in their limited production. I do want to give a footnote
11:21:07 10 here, Judge. Wal-Mart is one of the largest Defendants, if
11 if not the largest Defendant in this case, with the smallest
12 production of documents. They originally told us, "We don't
13 have "know your customer" documents. We now have documents
14 where -- of course, they had "know your customer" documents.
11:21:22 15 It's a requirement. We need those documents. We just don't
16 have a full production.

17 Same thing -- and this is all in our letter on
18 December 19th. High risk prescriber data. They used high
19 risk prescriber data to do Suspicious Order Monitoring. We
11:21:39 20 know that because we've located some documents which tell us
21 that.

22 We haven't received a full and fulsome production
23 concerning high risk -- they call it their High Risk
24 Prescriber Program, which also -- well, this issue isn't
11:21:57 25 ripe.

1 So we still haven't received, Judge, the amended
2 answers to interrogatories, which I believe were promised to
3 us. We haven't received amended responses or full responses
4 to a whole host of production of documents. And I'm
5 prepared to go through them or, you know, my partner Jan
6 Brody can go or we can have a special hearing. However you
7 want to proceed.

8 MS. FUMERTON: This is Tara Fumerton. May I
9 respond basically to the each of those points?

10 SPECIAL MASTER COHEN: Go ahead.

11 MS. FUMERTON: So this is a little bit
12 difficult because even with respect to Mr. Brody, who's on
13 the phone, he joined the meet-and-confer process fairly
14 late, and no disrespect to him, but maybe is not grounded in
15 the facts in the prior meet-and-confer process. But as to
16 each of these issues briefly, I'll take Altorex first.

17 So we've identified that Bates number. The Altorex
18 output that were used as part of the Order Monitoring
19 process, what Plaintiffs have said they continue to want, I
20 guess, is some sort of hypertechnical, but it's -- the
21 algorithm that was used to show how the data was polled, and
22 we have been investigating whether or not that's even
23 possible for these historical documents, but as far as the
24 outputs of that Altorex, they have been produced and
25 identified by Bates number.

1 With respect to the "know your customer" statement
2 that Plaintiffs' counsel just made, we have never said that
3 we didn't use "know your customer" information. To the
4 contrary, our letters went back and forth, and the fact some
5 of this information is in our production shows that we have
6 used it. And our position is slightly different.

7 They have requested information about "know your
8 customer" programs and policies that might be more
9 applicable to a distributor like McKesson or somebody who is
10 distributing to pharmacies that were, you know, it did not
11 have any affiliation with or didn't know.

12 Wal-Mart distributes only to its own pharmacy,
13 pharmacies, doesn't distribute anywhere else. And so there
14 are discussions of "know your customer" requirement and how
15 Wal-Mart complied with those, and those are in our
16 production. And we've given additional information to them
17 with respect to that to clarify it.

18 With respect to specific comments about how we're one
19 of the largest Defendants in this case, perhaps you know, by
20 sheer size we are, but with respect to actually distribution
21 of this case, we are one of the smallest. It's only a
22 fraction, and I want to say 1 or 2 percent of the overall
23 distribution in this direction so --

24 SPECIAL MASTER COHEN: I don't care about your
25 size.

1 MS. FUMERTON: -- so purely perspective.

2 So then just going to the amended rogs as well, we are
3 sending amended rogs today. We will have them today.

4 And then with respect to the request for production,
11:24:57 5 that's where we had sent an additional letter identifying
6 information by Bates number. We produced some of the
7 information that the Special Master requested. For example,
8 the McKesson example contract. We did give that to them.

9 So again, I just -- these are blanket statements that
11:25:14 10 Plaintiffs' counsel are making who were not -- have not been
11 really involved in this issue. It's sort of difficult to
12 address because I feel a lot of these issues are either not
13 fully being described accurately or are not fully describing
14 the responses that we've made.

11:25:32 15 MR. CECCHI: Judge, I can address that and I
16 can address Altorex directly.

17 Wal-Mart's response, all it did was confirm that four
18 documents they've produced are output from Altorex.

19 SPECIAL MASTER COHEN: Four you said?

11:25:45 20 MR. CECCHI: Four, yes.

21 Quote, "We have confirmed that the four Buzio analyst
22 reports Wal-Mart produced are output from Altorex. We are
23 still evaluating whether we can produce the "work flow that
24 you requested during our December 28th meet and confer."

11:26:01 25 That's parsing. What we asked for is the native

1 files, Altorex native files, so we can see what they were
2 looking at. It's not hard to produce this. It's electronic
3 data. And I'm no expert in it, but this is an example of
4 parsing.

11:26:14 5 I can read what they responded. I can read our
6 request for productions of documents. Let me give you
7 another one.

8 In their response to our -- the meet and confer,
9 Request For Production Number 11, quote, "Consistent with
11:26:28 10 our discussions, we will provide you with the Bates numbers
11 of the documents in Wal-Mart's production of the Wal-Mart's
12 documents concerning the safe use of opioids and risk of
13 opioid misuse."

14 We asked for all documents, whether they were Wal-Mart
11:26:43 15 given to you by manufacturers in connection with marketing
16 presentation, all documents.

17 So what they come back and do is parse our request and
18 say, "Well, we've given you some Wal-Mart documents."
19 That's parsing. That's what they're doing. That's why we
11:26:56 20 are not getting fulsome productions.

21 The same requires -- Request For Production Number 13,
22 Wal-Mart did not propose quote, "Quotas to any entity, and
23 thus, has no such documents to produce." We didn't limit
24 the request to quotas we limited -- we asked for needs,
11:27:14 25 forecasting documents. We don't have them.

1 Now Ms. Fumerton is right. I wasn't at the meet and
2 confer, but that doesn't mean they have produced the
3 documents that they haven't -- that they have wholesomely
4 responded to our request. The fact is that they have not.
5 And Altorex is a perfect example.

11:27:29

6 So I don't know how best to deal with this, your
7 Honor. We're happy to have a special session and go through
8 though this in microscopic detail, but the fact of the
9 matter is we don't think the meet-and-confer process is
10 moving the ball forward with the rapidity and consistent
11 with your Honor's comments earlier this morning that this
12 should be done without parsing, that we need the facts.

11:27:44

13 SPECIAL MASTER COHEN: All right.

14 So because this was -- because this was on the agenda
15 under previous agenda items with a note that I just wanted a
16 status report, the status report is now clear that we need
17 to move this back kind of into a different category. And it
18 may be that you simply are going to give me back the letter
19 from December 19th saying these are all of the topics that
20 we need rulings on, but I need in writing --

11:27:59

11:28:21

21 MR. CECCHI: Sure.

22 SPECIAL MASTER COHEN: -- from both sides
23 their positions on the sub-issues that you just named, the
24 "know your customer," the Altorex Software, the native files
25 from Altorex, the high risk prescriber program and data, and

11:28:32

1 a list of what is left.

2 I assume that there's been some movement because over
3 the past couple of weeks, I've heard, "We're working
4 together." So whatever is now left, if you believe that
5 you're at an impasse, I need a list of those things in
6 writing, and I'll either rule on them in writing or we'll
7 get back together.

8 MR. CECCHI: Good. Thank you, your Honor..

9 MS. FUMERTON: Yes, your Honor we will do
10 that.

11 SPECIAL MASTER COHEN: Thank you, Tara.

12 Jumping back now, more or less, into the order, on the
13 agenda, the next one I see is Number 127. This is something
14 I ruled on via e-mail in writing. I think there's nothing
15 left to discuss there. Anybody think that something more
16 needs to be said about that topic?

17 MR. SHKOLNIK: Hunter Shkolnik for Cuyahoga
18 County.

19 Your Honor, no, I think you've -- Special Master
20 Cohen, I think you resolved this issue. I think you said
21 three and a half hours, and we're ready to go.

22 SPECIAL MASTER COHEN: Thank you.

23 MR. SHKOLNIK: Thank you.

24 SPECIAL MASTER COHEN: 128 we've discussed at
25 length.

1 129 is a topic that I said Cardinal could submit a
2 response on Friday. So we're not going to address that now.

3 I think 130, 131 and 132 are all related and have to
4 do with essentially the law enforcement privilege.

11:30:25 5 MR. PIFKO: Special Master Cohen, if I may. I
6 want -- there are different issues -- sorry. Mark Pifko
7 from Baron and Budd on behalf of Cleveland.

8 These -- these three issues are different, and I want
9 to address -- I understand there's overlap, but they should
11:30:39 10 be addressed, so -- in a separate way.

11 MS. WU: Special Master Cohen, Laura Wu for
12 McKesson and the Defendants. And I'm happy to kind of give
13 an update as well.

14 Number Agenda Item 130 is the Defendant's motion to
11:30:54 15 compel production of thousands of documents, which
16 Plaintiffs are currently withholding on the basis of
17 unsubstantiated law enforcement privilege claims.

18 SPECIAL MASTER COHEN: I'm sorry, Laura. You
19 said compel production of what?

11:31:07 20 MS. WU: Documents which are currently being
21 held by Plaintiffs on the basis of unsubstantiated law
22 enforcement privilege claims.

23 SPECIAL MASTER COHEN: When you say documents,
24 can you give me an idea within Agenda Item 130 what sort of
11:31:21 25 documents you're talking about?

1 MS. WU: We are requesting an order compelling
2 production of all documents currently identified as being
3 withheld on the basis of a law enforcement privilege claim.
4 We bring this motion on the basis that the Plaintiffs have
5 failed to make out the very basic requirements for any law
6 enforcement privilege claim.

7 When we start with the legal analysis for that claim,
8 we have to start with a formal claim by head of the relevant
9 department. Here that would be our local sheriffs or police
10 chief. We have no claim by a sheriff or police chief. When
11 we move on next, there needs to be a personal consideration
12 of each document. Again, there's no personal consideration,
13 and there's no specification of the privilege. And if I --

14 SPECIAL MASTER COHEN: One second. I see you
15 waving your finger. Let me kind of lift up to like 50,000
16 feet.

17 MS. WU: Certainly.

18 SPECIAL MASTER COHEN: I understand we're
19 fighting over something that matters.

20 MS. WU: I'm happy to address that.

21 SPECIAL MASTER COHEN: So I've been given
22 documents to review. I don't remember whether it was in
23 conjunction with Agenda Item 130, 131 or 132, but I think
24 they were duty reports.

25 MS. WU: Yes. And that's Agenda Item 92, the

1 Cleveland duty reports.

2 SPECIAL MASTER COHEN: And I think I've
3 gotten -- sorry, which Agenda Item?

4 MS. WU: 92.

11:32:43 5 SPECIAL MASTER COHEN: So there's another
6 topic?

7 WOMAN: Carryover item from several weeks
8 prior, correct.

9 SPECIAL MASTER COHEN: And here's what I see.
11:32:50 10 I see redacted information that would be completely
11 irrelevant and unhelpful to you if you saw it. And I see
12 redactions of information that doesn't look confidential. I
13 don't understand why those redactions are made, like the
14 name of, you know, the super secret name for the project,
11:33:14 15 Project Innocence, and it's -- that's redacted.

16 How is that mattering to anybody in this litigation?
17 And so I'm not getting why we are fighting over some of this
18 stuff.

19 MS. WU: Well --

11:33:25 20 SPECIAL MASTER COHEN: Some I get, but now
21 again, let's say a 50,000-foot view. Yes, since I think I
22 need this explained to me a little bit, the essence of what
23 Defendants are saying, why they're pounding the table about
24 this topic is that it goes to damages.

11:33:42 25 MS. WU: Well, Special Master Cohen, I

1 believe it's broader than that. Presently there are more
2 than 20,000 documents which Plaintiffs have identified under
3 log, subject to law enforcement privilege claim. I
4 understand from letters that Cleveland counsel has provided
11:33:58 5 just this week that there are additional documents of an
6 unknown quantum that are also being withheld on the very
7 same basis. So we have a massive pile of documents that are
8 being withheld. And what we understand from the privilege
9 claims that we see on the logs and also from the redacted
11:34:16 10 documents that we have, and then with the benefit of
11 significant deposition testimony from law enforcement
12 witnesses from the track jurisdictions is that at present,
13 Plaintiffs, across the board, are withholding significant
14 documents on the basis that any specific law enforcement
11:34:34 15 encounter records are subject to a law enforcement
16 privilege.

17 First off, that is contrary to the law. In any case,
18 the law enforcement privilege is not an absolute privilege,
19 and whereas here --

11:34:47 20 SPECIAL MASTER COHEN: I've read all this but
21 you're not answering my question.

22 MS. WU: Sure.

23 SPECIAL MASTER COHEN: Why do you need them?

24 MS. WU: The substance of many of the
11:34:52 25 documents that have either been withheld or redacted, as

1 best we can tell from the information available to us, which
2 certainly is limited, but based on the deposition testimony
3 we've obtained, that the witnesses have told us that many of
4 the documents that have been redacted are withheld in their
11:35:08 5 entirety include information about specific law enforcement
6 encounters that would identify the drugs involved in those
7 encounters, for example, and that's information which we
8 haven't been able to benefit from elsewhere in the
9 production.

11:35:23 10 What we see by and large in the law enforcement
11 productions that we've received thus far is that we have
12 charge information, statutory information, or aggregate data
13 that is insufficient to tell the Defendants what type of
14 drug was involved, drug or drugs was involved in a law
11:35:42 15 enforcement encounter. That means that Defendants aren't
16 able to test the claims that the law enforcement encounters
17 that form the bases for many of the allegations in the
18 Plaintiffs' complaints, whether those encounters involved
19 heroin, meth, cocaine --

11:35:57 20 SPECIAL MASTER COHEN: Got it. Got it. Drugs
21 involved. What else?

22 MS. WU: Correct.

23 In addition, we need to understand the circumstances
24 in those specific law enforcement encounters and the
11:36:08 25 investigations into intervening alternate causes for opioids

1 present in our track jurisdictions. The plaintiff law
2 enforcement witnesses over and over again have told us that
3 there are criminal acts involved. And based on the
4 production thus far, we're not able to inquire into those
11:36:30 5 intervening and alternative criminal acts that Plaintiffs'
6 own witnesses have identified for us.

7 Gert Wilms, the Prosecutor from Akron, went so far as
8 to say yeah, those -- those criminals should be Defendants
9 in this lawsuit, but as we sit here today with the
11:36:44 10 productions we have, we aren't able to take discovery of
11 those intervening and alternative causes because that
12 relevant information has been obscured by redactions or
13 completely withheld in the Plaintiffs' productions.

14 SPECIAL MASTER COHEN: Can you give me -- I
11:37:00 15 know it's -- I'm asking you to describe something you
16 haven't seen. But, can you give me an example that you
17 think might have been in so of the documents you've -- that
18 were redacted or that you didn't receive that would give you
19 information about criminal acts that you want?

11:37:16 20 MS. WU: Sure.

21 Again, I'd like to talk about deposition testimony
22 because that's the most specific factual information that we
23 have.

24 We deposed a former patrol officer who described his
11:37:30 25 first encounter with prescription opioids in law

1 enforcement. He described a robbery of a pharmacy which
2 took place to the best of his recollection back in 2006 when
3 he was on a patrol. He could not remember the name of the
4 pharmacy that was involved. That's incredibly relevant
11:37:48 5 information.

6 We've looked back to the documents. We've tried to
7 find something to tie to that testimony. And we were unable
8 to locate any such information in the productions. What we
9 see is specific people, places, and things are all redacted.
11:38:04 10 And so we're not able to test the claims.

11 SPECIAL MASTER COHEN: Why do you need
12 specific places? So there are duty reports -- and I don't
13 understand why. Okay? There are duty reports that said
14 that the event, whatever it was, happened at 185th and, you
11:38:17 15 know, Jones Street, I don't understand why it was redacted
16 nor do I understand why you need it.

17 MS. WU: The specific location -- I don't know
18 what type of law enforcement event you're referencing. It
19 would depend on the nature of the law enforcement event, but
11:38:33 20 for example, speaking from the Defendants' perspective, we
21 need to look into claims of diversion. So if we are -- we
22 are specifically, but not exclusively, interested in looking
23 for law enforcement encounters where there are criminal
24 components to the diversion alleged in this case. So, for
11:38:54 25 example, the example I highlighted earlier about a pharmacy

1 robbery, we would like to know what pharmacy that is so we
2 can tell if -- tell what events led us to that event, what
3 investigation happened after, and whether or not those
4 events are causes for the harms which are alleged in this
5 case.

6 So it's not just damages. Damages are certainly a
7 component of this in terms of testing the quantum of what we
8 expect to receive in expert discovery from Plaintiffs'
9 experts. I highlight that we don't have a lot of that
10 information now, but it also has to do with causation, both
11 intervening and alternative causes for the harms which
12 Plaintiffs alleged.

13 SPECIAL MASTER COHEN: Let me hear from
14 Plaintiffs, please.

15 MR. PIFKO: Thank you, your Honor. Mark Pifko
16 from Baron and Budd on behalf of Cleveland.

17 As an initial matter, this is procedurally improper.
18 We can't do it this way. We just had this whole discussion
19 about the Cardinal issue. Plaintiffs come and said all SOMS
20 data, we request an order saying they immediately produce
21 all those documents immediately. We were just arguing for
22 15 minutes about a document that wasn't even on the
23 privilege log. We've identified these documents on the log.
24 We can't -- I understand a lot of things are being done in a
25 unique fashion in this litigation, but we cannot just have

1 some wholesale order that says all these documents are not
2 subject to --

3 SPECIAL MASTER COHEN: Oh, yes, you can. So
4 you'd better get to the merits.

11:40:22 5 MR. PIFKO: Anyway you asked the fundamental
6 question here, and there's no basis for them to need any of
7 this information.

8 They have -- they have the data, and they have the
9 summary and we're fighting about the detail reports --

11:40:35 10 MS. WU: We don't have the LERMS data.

11 MR. PIFKO: They have -- you have -- they have
12 all the information about it. If there is an arrest or
13 there is an incident involving some type of drug, they have
14 that in the data that's already been produced. They're
11:40:48 15 asking for the narrative detailed reports, but they have the
16 specific information. It's just simply not true that they
17 don't have the information about the drugs.

18 And as far as like other things we're talking about,
19 locations, identity of individuals, it's irrelevant. It
11:41:02 20 has -- it has no bearing on anything here. We will
21 stipulate that it's illegal to have heroin, but whether
22 there was an illegal activity concerning heroin is not a --
23 is not the issue here. You know, we contend that they
24 caused the heroin to come into this community, but they're
11:41:17 25 not going to establish by showing some arrest that happened

1 on 34th Street that it was a heroin dealer. That's
2 not going to be relevant --

3 SPECIAL MASTER COHEN: Explain to me why
4 you've redacted.

11:41:27 5 MR. PIFKO: Well --

6 SPECIAL MASTER COHEN: The location of a
7 crime, the fact that it happened at a given intersection,
8 not -- location of a police officer's investigative report,
9 that it says that he reported to an intersection and that's
10 redacted. Explain to me why when it says that it's not --
11 and I'm making this up obviously -- you know, Project
12 Snowball, why that's redacted. Who cares what the name of
13 the project is?

14 MR. PIFKO: Here's where that comes from, and
11:41:55 15 I can't speak to that -- that's why these issues can't all
16 be tied together. I can't speak for the other Bellwethers,
17 but I can tell you -- I said this on the phone before --
18 that these law enforcement issues are of the utmost
19 sensitivity to the City of Cleveland.

11:42:07 20 SPECIAL MASTER COHEN: They really care that
21 somebody knows it's called Snowball?

22 MR. PIFKO: They contend that a lot of the
23 information that's redacted provides insight into the
24 techniques and the strategy of how they conduct their law
11:42:20 25 enforcement investigations, and they are deathly afraid if

1 it gets out in the hands of the Defendants -- I don't
2 believe anyone sitting here is going to purposefully release
3 the information, but we all know there's contract attorneys
4 here, there's inadvertent productions of privileged
11:42:34 5 information happening on both sides. They are deathly
6 afraid if that information gets flipped over to the other
7 side, it's going to get into the wrong hands. Who knows who
8 know somebody who, you know, some enterprising criminal
9 wants to find out some information, they can get that there
11:42:49 10 and that is --

11 SPECIAL MASTER COHEN: I'm sympathetic. I
12 truly am sympathetic to law enforcement's interests in
13 making sure that there is no breach of important information
14 that would in any way hamper or impede or hurt what they're
11:43:09 15 doing. I'm totally sympathetic to that. Right? And I get
16 that when, for example, a lot of information is given to
17 some folks, that it may be that a paralegal who's working on
18 it is the boyfriend or girlfriend of somebody out there and
19 somehow, some information is there by divulge to that person
11:43:26 20 that has a bad effect. I get it. Okay?

21 Those interests haven't yet convinced me that what you
22 are redacting and what you are not giving to the Defendants
23 is consonant with that concern. I'm just not seeing it.

24 MR. PIFKO: That's why we need to deal with
11:43:45 25 this on a document-by-document basis.

1 SPECIAL MASTER COHEN: No. You can't do it
2 that way.

3 MR. PIFKO: If you want to say some address in
4 the abstract is not privileged, I can't say -- I can say
11:43:55 5 that generally, it is sound privilege but I can't say the
6 context of a specific document or why that it might be
7 confidential in that situation. We just -- we cannot deal
8 with this in a vacuum on a broad brush stroke. We need to
9 look at document by document. If it's not you, some other
11:44:11 10 Special Master needs to go through these documents.

11 MS. WU: Special Master Cohen, these first
12 step --

13 A MAN: Special Master Cohen --

14 MS. WU: I'm sorry.

11:44:18 15 The first step in this inquiry is to determine whether
16 or not the Plaintiffs have made out any valid privilege
17 claim.

18 What counsel for the Plaintiffs now request is the
19 opportunity to put -- to make good on the burden that
11:44:32 20 they've had through this entire litigation and ignored up
21 until now. But, we can move fast, move past the technical
22 aspects of the inquiry to where you started, which is that
23 this is responsive, relevant, and in fact, crucial
24 information to the claims and defenses in this case.

11:44:51 25 And courts regularly call for the production of even

1 law enforcement privileged information, which is subject to
2 a valid claim, which we don't have here, based on an
3 attorney's-eyes-only production basis.

4 We've offered that in this case, and we think that's
11:45:07 5 more than sufficient to protect the client -- the
6 Plaintiff's interests because we share concerns about law
7 enforcement. It is not our client's interest to put
8 anything in jeopardy.

9 SPECIAL MASTER COHEN: I want to ask you the
11:45:18 10 question. And then I need to hear from Paul.

11 MS. WU: Certainly.

12 SPECIAL MASTER COHEN: So I've looked at a few
13 records now and think that the redactions are inappropriate,
14 don't make sense to me. And I would say, I don't know,
11:45:35 15 let's say three out of three. Okay? I don't remember how
16 many I looked at. Let's say three out of three of those
17 documents, I think that the redactions were excessive or
18 inappropriate and, therefore, Defendants should just get
19 them. Let's say that's what I conclude. Okay?

11:45:50 20 Applying that same logic, why wouldn't it be the case
21 that with 100 documents that were produced by -- and I don't
22 remember the Defendant honestly. I think it was Cardinal --
23 I asked them to go back and look at them and they withdrew
24 84 of them, why wouldn't I say, "You know what? You get
11:46:08 25 them all. Plaintiffs you get them all"? Same logic.

1 MS. WU: I think here we're dealing with two
2 legal standards. I believe that with regard to the Defense
3 claims discussed earlier, we are addressing the
4 attorney/client privilege, which, as you know, is an
5 absolute privilege.

6 Here we're dealing with a law enforcement privilege.
7 So even assuming a valid claim of law enforcement privilege,
8 production of privileged information is in many, if not all
9 circumstances, appropriate with proper confidentiality
10 protections. So the legal analysis is very, very different
11 in those circumstances.

12 SPECIAL MASTER COHEN: Paul, did you have
13 anything to say or --

14 MR. FARRELL: Paul Farrell on behalf of the
15 Plaintiffs.

16 I think you picked up on the same hypocrisy I have
17 been frustrated with in this litigation.

18 SPECIAL MASTER COHEN: Her answer was a good
19 one, though.

20 MR. FARRELL: It wasn't bad.

21 (Laughter.)

22 MR. FARRELL: And so moving past the issue of
23 the attorney/client being a different standard, I just want
24 to remind the Court that the law enforcement privilege was
25 relied upon heavily when we were debating ARCOS. And my,

1 how quickly the Defendants have changed their position on
2 the effect of law enforcement privilege.

3 SPECIAL MASTER COHEN: But the ARCOS data was
4 produced subject to protective order.

11:47:24 5 MR. FARRELL: So subject to all that, what I
6 really want to remind the Court is we're getting ready for
7 CT2. And so what I want to do is I want us to get to some
8 ultimate conclusion. When we challenged the Cardinal Health
9 privilege log, you had found that those documents are
11:47:40 10 extremely relevant.

11 If, on the other hand, this pursuit of police files is
12 not very relevant, not probative, then what we're doing is
13 we're burdening these communities with producing information
14 that has little to no relevance.

11:48:01 15 And so what I'll point out about the idea of bringing
16 in third parties, there hasn't been a third-party complaint
17 filed by any of the Defendants anywhere in the country.
18 There absolutely has not been any indication that the
19 robbery of a pharmacy of 5,000 pills has had a dramatic
11:48:20 20 impact upon the 25 million pills they sold into Cleveland.

21 And so for a relative standpoint, what I don't want is
22 I don't want Defense's discovery to be punitive. And if
23 this is an exercise where we get to go through and allow
24 them to develop a record -- and as it turns out, there's
11:48:39 25 nothing in here, other than time consuming, I'd like to

1 reach that conclusion before we replicate these issues in
2 CT2, CT3 and CT4.

3 MS. WU: Special Master Cohen --

4 SPECIAL MASTER COHEN: Let me ask --

11:48:53 5 MR. LEDLIE: Special Master Cohen, this is
6 James Ledlie from Motley Rice. I'm with Summit County and I
7 wanted to address one item, which is you were requesting why
8 a location might be redacted or why an operation of a covert
9 operation might be redacted.

11:49:07 10 SPECIAL MASTER COHEN: Yeah, go ahead.

11 MR. LEDLIE: You need to consider, your Honor,
12 in deciding this issue that there are a number of open
13 investigations, open criminal matters, and there's a certain
14 amount of repetition within criminal enterprises. And so
11:49:25 15 while the data might be -- that is one reason why certain
16 pieces of information may be redacted is to protect the
17 security of the officers in the field and of the sources and
18 methods of investigation, held tightly of all criminal
19 police investigations.

11:49:45 20 MS. WU: Special Master Cohen --

21 SPECIAL MASTER COHEN: Here's -- no, I
22 still -- I will get to you. I still have some more
23 questions for the Plaintiffs.

24 I want to understand why the names of officers have
11:49:59 25 been redacted if -- if -- I get that if they're undercover,

1 I get it. Is there any other reason that the names of an
2 officer would be redacted?

3 MR. ACKERMAN: Special Master Cohen, this is
4 David Ackerman for Summit and Akron. I want to answer your
11:50:13 5 question and also piggy back on what Mr. Ledlie just said.

6 My understanding is that officers' names have been
7 redacted where those officers are acting as undercover
8 informants or the officers are operating in an undercover
9 capacity.

11:50:29 10 The issue that we from Summit and Akron and I think
11 other Plaintiffs have is that Ms. Wu is seeking to operate
12 here on sort of a global basis saying there should be no law
13 enforcement privilege ever where I think there are
14 pockets -- you have looked at documents from Cleveland and
11:50:46 15 have concerns about redactions. I don't know what those
16 documents say and I can't speak to those. But, I do know
17 that for Summit and Akron, we have withheld documents
18 regarding ongoing investigations or redacted the names of
19 confidential informants, and we discussed this with you on
11:51:05 20 December 21st, and you told us to go back and do a re-review
21 and we're doing that re-review. And I just want to make
22 sure that nothing that we had previously discussed or
23 determined is going to, all of a sudden, be reversed by this
24 notion that there should be some global disavowment of the
11:51:22 25 law enforcement privilege.

1 MS. WU: Special Master Cohen, as everyone is
2 well aware, I know that Mr. Farrell is thinking about Track
3 Two, but I'm very concerned about the January 25th cut-off
4 date, and what I'm hearing from Plaintiffs is that they
5 essentially want to restart their analysis of law
6 enforcement privilege documents, and that's inappropriate at
7 this late stage in the game.

8 SPECIAL MASTER COHEN: How many documents are
9 we talking about?

10 MS. WU: We're talking about more than 20,000
11 documents which have been logged specifically for a law
12 enforcement privilege claim. In addition, based upon
13 correspondence from Cleveland counsel, we understand that
14 there's a large -- what I believe to be a large number of
15 documents that are not logged, that for which we're being
16 told there is a law enforcement privilege claim. And just
17 to highlight, I know we've been very focused on duty reports
18 because those are the documents which you have in front of
19 you for in camera review, but Plaintiff witnesses have
20 identified several other categories of documents, which are
21 currently being withheld, based on a law enforcement
22 privilege claim, which has been unlogged, such as
23 heroin-involved death investigation charts.

24 Scott -- Detective Scott Moran from Cleveland just sat
25 for deposition last week. He identified a number of

1 categories of documents which are not on a privilege log,
2 and based on Cleveland counsel's letter of Monday night, we
3 understand are now being the subject of such a claim.

4 It's first of all too late in the day to do that.
11:52:51 5 There's no substantiated claim whatsoever. All we have is a
6 letter from counsel. That's not how one makes a privilege
7 claim. And when we look at the substance of those documents
8 as described by Detective Moran, these are critically
9 important to the Defendants in this case.

11:53:09 10 So even assuming a valid law enforcement privilege
11 claim, which we don't have, the authority is clear that
12 production is appropriate. And here we're happy to afford
13 Plaintiffs whatever additional confidentiality protections
14 they think are necessary. We're very happy to do that.

11:53:26 15 SPECIAL MASTER COHEN: Let me ask you about
16 that.

17 Let's say that I -- let's say that I order all of
18 those documents to be produced attorney's eyes only in some
19 extremely limited fashion, and what I'm thinking of is not
11:53:39 20 every Defendant, to like two or three people, and those two
21 or three people on behalf of all Defendants will go through
22 those documents and identify the information that is
23 relevant to superseding intervening cause, is relevant to
24 damages, is relevant to additional discovery, and that's it.
11:53:58 25 What then happens, I think, is that I've at least addressed,

1 if not completely cured, Plaintiffs' counsel's concern that
2 the production of that information somehow might lead to
3 something bad happening. Give me an idea.

4 MS. WU: I think that we're open to that. I
5 might have to negotiate the number of attorneys simply
6 because the number of documents for review is so large and
7 the time is so tight, especially before depositions which
8 are scheduled for as soon as next week. But, I think that
9 we would be amenable to a smaller group of Defendants who
10 would be able to receive the documents in the first instance
11 and then revisit in collaboration with Plaintiffs the
12 appropriate way to move forward in terms of making those
13 documents more broadly available and for use in depositions.

14 SPECIAL MASTER COHEN: I mean the alternative,
15 and I'll hear from Plaintiffs now, the alternative is for
16 Plaintiffs to spend a God-awful amount of time going through
17 documents and making sure that their redactions don't
18 include the three or four things Defense counsel just
19 identified as being important.

20 For example, the drugs involved, whether a criminal
21 act was involved, and the location. I mean I'm okay with
22 informants and undercover officers' identities being
23 redacted. It still makes no sense to me why you're
24 redacting Project Snowball, but it's also irrelevant to the
25 Defendant. So I don't care about that.

1 MS. WU: Special Master --

2 SPECIAL MASTER COHEN: -- so there's two

3 options. One is to protect your interests, which as I said

4 I'm sympathetic to, by just letting the Defendants have the

11:55:37 5 documents but in an extremely limited way or give yourself a

6 lot of work and have to go through and redact. And I want

7 to hear from Plaintiffs.

8 MS. WU: I just wanted to underscore, Special

9 Master Cohen, that we had made that very same offer, saying

11:55:52 10 just redact the necessary information, we don't need it, and

11 we don't -- we don't care if you redact it. But, instead

12 what we've been left with is the situation we have now,

13 which is crazy overbroad redactions and the withholding of

14 documents, some of which haven't even been placed on a

11:56:10 15 privilege log, which at this late date in discovery, with

16 January 25th staring us in the face, we really can't accept

17 that alternative at this point.

18 MR. ACKERMAN: I just want to make one point

19 quickly is that some of these documents -- David Ackerman.

11:56:30 20 Sorry.

21 Some of these documents have information that is

22 subject to DEA or DOJ restrictions, and we have been advised

23 by the DOJ or the DEA not to release them. And they have

24 been logged. And at this point --

11:56:46 25 SPECIAL MASTER COHEN: How many of the 20,000

1 are we talking about?

2 MR. ACKERMAN: That I don't know. I'd have to
3 go back and find that.

11:56:54

4 SPECIAL MASTER COHEN: Take a semi-educated
5 case.

6 MR. ACKERMAN: I would guess at least 10 if
7 not more.

11:57:03

8 SPECIAL MASTER COHEN: Is DEA or DOJ here
9 today? Did they know the hearing was going to occur? I
10 understand we're under a furlough.

11 MALE COUNSEL: I sent a letter about trying to
12 get together, and I got an automatic response he was on
13 furlough.

14 SPECIAL MASTER COHEN: He's in Ohio. Bennett.

11:57:16

15 MS. SINGER: Special Master Cohen -- Linda
16 Singer. Having talked to DOJ about these issues, it is Mr.
17 Bennett's team that handles any issue related to Touhy and
18 they are all furloughed. So DOJ is unable to make any
19 decisions about Touhy until the shutdown is over.

11:57:31

20 MS. WU: One point to answer your question.
21 DEA is aware of the conference today. I received a call
22 yesterday from an attorney in the civil fraud division at
23 DOJ, who is not furloughed, who is calling on Mr. Bennett's
24 behalf to inquire as to the status of law enforcement
11:57:48 25 privilege issues. I shared with that attorney that there

1 would be a conference today and that I would pass on her
2 communication to all parties in this case. And I've done
3 so. So to make sure we're sharing information
4 appropriately.

11:58:02 5 SPECIAL MASTER COHEN: Who is that?

6 MS. WU: The name escapes me, but I'll be
7 happy to forward you the e-mail as well.

8 SPECIAL MASTER COHEN: Okay. So, Mr. Pifko.

9 MR. PIFKO: I was just going to add in
11:58:14 10 addition to the DOJ issues, there's also certain types of
11 informant issues that even our clients are not allowed to
12 know that are kept internal to the -- Cuyahoga County has
13 that. And again, I just -- I want to reiterate that they
14 don't need this information, that all the charges that have
11:58:29 15 been brought, it's all been produced. They have all the
16 details they need. But at bottom, if you're going to order
17 something, I know my client is going to insist on reviewing
18 them.

19 So if you're going to order that, we need to look for
11:58:40 20 certain categories of information. That's the approach that
21 we're going to take. But I -- Defendants really do not need
22 this information. It's a waste of everyone's time and
23 resources.

24 SPECIAL MASTER COHEN: All right.

11:58:49 25 So I just want to understand your assertion. That

1 Defendants already have what they're asking for. Explain
2 that to me.

3 MR. PIFKO: They have in the -- my local
4 counselor here maybe can explain some of the details of the
11:59:04 5 workings of LERMS a little bit better than I can but they
6 have in the LERMS data, they have detailed discussions about
7 the property that was seized. If that's drugs, it's -- it's
8 discussed in the LERMS data, and I've said this before.
9 I -- when I hear their complaints, I feel like they don't
11:59:21 10 understand how to use the data that's been produced to them.
11 And you know we're getting all sorts of databases and weird
12 programs like Mr. Cecchi was discussing. They're not
13 teaching us how to use it. It's not our job to teach them,
14 but there are different spreadsheets on there that, all from
11:59:38 15 LERMS and it can tell you about an incident that occurred
16 and you can cross check that with property seized and see
17 what the drugs were. So the contention that they don't know
18 what the drugs are is false.

19 And they have the charging data from the County that
11:59:51 20 was produced. I just don't -- it's mind boggling to me they
21 would somehow need information about the identity of the
22 victim or some of this other --

23 SPECIAL MASTER COHEN: Is LERMS only
24 Cleveland?

12:00:05 25 MS. LUCAS: Special Master Cohen, may I be

1 heard on that?

2 SPECIAL MASTER COHEN: One second. Is LERMS
3 only Cleveland?

4 MS. WU: LERMS is Cleveland-specific, and this
12:00:10 5 is Laura Wu.

6 Amy Lucas is standing up. She's been handling the
7 LERMS issues for months now. And I'd be happy to have her
8 address the LERMS deficiencies.

9 SPECIAL MASTER COHEN: For the record, we're
12:00:22 10 touching on Agenda Item 51. Go ahead.

11 MS. LUCAS: Correct. I take issue with
12 Mr. Pifko's representation that we have everything that we
13 need. That is incorrect.

14 Last time, if you'll recall, the last hearing,
12:00:35 15 Mr. Pifko represented that the detailed reports, which
16 contain the actual details of what happened -- and I
17 understand that they have produced spreadsheets with the
18 other property information. But, I think we all know how to
19 use a spreadsheet, but we had all agreed that the detailed
12:00:51 20 reports are to be produced. And they still have not done
21 it. And we were supposed to get an update today. So for
22 him to represent that we have everything that we need is
23 just simply incorrect.

24 MR. PIFKO: The detail reports aren't
12:01:04 25 relevant. I still believe that. I'm going to give it to

1 them anyway. I've been the most transparent person in this
2 litigation. I'm going to give them everything. It's not
3 relevant.

4 MS. WU: This is Laura Wu.

12:01:16 5 I would just say that Mr. Pifko mentioned that what
6 the Defendant has is charge information, and that's true.
7 We have a lot of charge information. We have bookings
8 information. But that does not give us information about
9 intervening alternative criminal acts, and it also does not
12:01:29 10 give us drug-specific information for individual law
11 enforcement encounters.

12 And at this point, that information has not been
13 provided to Defendants because it's subject to law
14 enforcement privilege.

12:01:41 15 SPECIAL MASTER COHEN: All right. Here's my
16 ruling.

17 MR. ACKERMAN: Special Master Cohen, before
18 you rule, I want to make sure I make the point for Summit
19 and Akron because there's been a lot of discussion about
12:01:49 20 what documents Cleveland has produced. Summit and Akron
21 have produced court records. They've made court records
22 available. Where any person has been charged, we have
23 produced a list of all of the -- all of the offenses where
24 they -- a person was charged with a drug-related offense and
12:02:06 25 made the underlying court files available. So what this is

1 is not issues where somebody was actually charged with a
2 crime. It is actually police investigative files.

3 So it is a totally separate issue. So the notion that
4 Defendants don't have any information on this topic is
12:02:22 5 incorrect.

6 SPECIAL MASTER COHEN: Yeah, I think -- look.
7 After all is said and done, after all of this argument, I
8 still think you guys are fighting over something that's not
9 worth fighting over.

12:02:34 10 So here's what's going to happen. Two things: First,
11 I want Defendants to identify 10 percent of the documents
12 that have been withheld in whatever categories you want,
13 ones you want to receive. You don't need to receive every
14 single one to do what you said you need to do, which is to
12:03:02 15 identify intervening superseding causes, identify the extent
16 to which the damages claims aren't valid because it has to
17 do with heroin and so forth. I'm not hearing arguments
18 anymore. I'm ruling. Okay?

19 You can identify those 2000 documents from a mix of
12:03:20 20 jurisdictions, however you want. They can be all Cleveland,
21 they can be a mix of the four different jurisdictions.

22 Those documents will be produced. You can produce
23 those documents with the following information redacted:
24 Informant's names, undercover officers, anything that would
12:03:46 25 reveal the existence of an ongoing investigation. And that

1 has to be extremely narrow. Okay? I'm not even sure a
2 Project Snowball name really touches on that.

3 Defendants, for their part, have to identify a very
4 few number of attorneys who will be given access to those
12:04:13 5 records. Your complaint or your -- your concern was to view
6 20,000 documents. I need a bunch -- well, it's not 20,000.
7 It's 2000. And so I'm thinking two or three should be
8 sufficient.

9 So the documents will be produced with those
12:04:32 10 redactions, and they'll be reviewed attorney's eyes only
11 pursuant to the orders that the parties have already agreed
12 to. Attorney's eyes only designation by only those Defense
13 counsel.

14 Any questions? Paul?

12:04:47 15 MR. FARRELL: So creating precedent moving
16 forward -- I'm sorry. Paul Farrell on behalf of the
17 Plaintiffs. Creating precedent for moving forward in other
18 case tracks, what I'll ask the Court to do at some point in
19 time is to make a ruling as to whether or not this exercise
12:05:06 20 is relevant toward the issue at hand.

21 SPECIAL MASTER COHEN: If prove unnecessary,
22 and we'll deal with that when we get to it. I understand
23 your concern.

24 MS. WU: Special Master Cohen, in follow-up to
12:05:18 25 an issue I raised during the argument portion of that issue,

1 which is that Cleveland has advised that there are
2 additional documents that have not currently been logged as
3 subject to a law enforcement privilege but are currently
4 being withheld, we're unable to select from those documents.
12:05:32 5 And for production, I understand that but we'd --

6 MR. PIFKO: That's not true, by the way.

7 MS. WU: -- ask for an entry of an order that
8 all of these documents be logged.

9 MR. PIFKO: They are logged.

12:05:42 10 What she's talking about is I voluntarily agreed to
11 re-review all of our duty reports and put more narrow
12 redactions on them, which we've been doing. And what she's
13 talking about is there were documents that were withheld in
14 their entirety, which then we were going to review and
12:06:01 15 produce them in a redacted form. So that's all we're
16 talking about.

17 And to the extent there are documents that haven't
18 been produced, it seems there are new requests they're
19 asking for that we are continuing to provide to them.

12:06:10 20 MS. WU: That's actually a point of
21 clarification. I can use the Heidi investigation records,
22 which I've referenced in connection with Detective Moran's
23 deposition, as an example. Those are documents which are
24 clearly responsive to our requests, and they're also within
12:06:26 25 the custody of -- an agreed-upon custodian, Detective Moran.

1 Those documents have neither been produced nor logged. And,
2 therefore, we have a problem.

3 MS. LUCAS: This is Amy Lucas.

4 I would also like confirmation of the details reports
12:06:41 5 from LERMS are excluded from this order because Mr. Pifko
6 has already represented that those would be produced.

7 MR. PIFKO: I've always contended that there
8 could be potential redactions on those documents. So that
9 could be covered by the privileges.

12:06:59 10 SPECIAL MASTER COHEN: We're not undoing
11 promises you've made. Did you promise to produce those?

12 MR. PIFKO: I promised to produce the data but
13 never said I was going to produce it unredacted. I've
14 always said, you can look at the letters and the discussions
12:07:10 15 we've had. One of the things they were upset about was I
16 said it was going to take time and it was burdensome because
17 we're going to have to go through and review them for these
18 privileges.

19 MS. LUCAS: That was at the last hearing.
12:07:19 20 There's a transcript of it, and we can check, but my
21 recollection was that Mr. Pifko said the chief legal
22 officer, chief lawyer from Cleveland was out of town.

23 MR. PIFKO: Again, I'm producing the LERMS
24 data. I'm just not producing it unredacted. I never said I
12:07:36 25 was going to give it unredacted.

1 SPECIAL MASTER COHEN: All right.

2 You can go back and examine that. And as I said,
3 promises made are not undone by this.

12:07:46

4 As for the specific documents you're referring to of
5 that one deponent, you know they exist, choose one.

6 MR. GALLUCCI: Special Master Cohen, Frank
7 Gallucci for Cuyahoga County.

12:07:58

8 One point of clarification with regards to the
9 redactions. You mentioned redaction of confidential
10 informants and undercover officers. The difficulty is we as
11 counsel do not have the ability to know those names. So
12 what I would request is that we can redact names of all law
13 enforcement. So I don't know who the confidential
14 informants are, I don't know who the undercover officers
15 are, and frankly there's no reason for Defendants to need to
16 know an officer or informant's name in any instance.

12:08:15

17 SPECIAL MASTER COHEN: I don't see a problem
18 with that, given what you've asserted you need this
19 information for.

12:08:30

20 MS. WU: We certainly -- Defendants have no
21 desire to have informant information. However, I've raised
22 the timing concern and also the over redaction issue to you
23 previously. We made the offer to receive these documents
24 with appropriate redactions months ago, and instead,
25 Plaintiffs chose this course. This is the situation of

12:08:47

1 their own making with just really about two weeks before the
2 close of discovery. There's simply not time to redo this
3 process, especially with critical law enforcement
4 depositions, which are set forth to go forth next week and
5 the following week.

12:09:05

6 SPECIAL MASTER COHEN: How timely can you
7 produce these 2000 records with the redactions you want to
8 undertake?

9 MR. PIFKO: We've addressed this. We've
10 mentioned this privilege from the beginning of the
11 litigation. So that's not true. They're the ones who
12 waited --

12:09:10

13 SPECIAL MASTER COHEN: Answer my question. I
14 don't need argument about stuff I've decided.

12:09:17

15 MR. PIFKO: I would say two weeks, a week.

16 SPECIAL MASTER COHEN: Got to be less than two
17 weeks.

18 MR. PIFKO: I'll do it in a week.

19 MR. ACKERMAN: Can I add one point of
20 clarification? We talked earlier about information that may
21 have DOJ or DEA restrictions. To the extent any of the 2000
22 documents have information from the DOJ or DEA, we will need
23 to be authorized to redact that info or seek the DOJ's or
24 DEA's input to the extent we can get it.

12:09:28

25 SPECIAL MASTER COHEN: So I need you to try.

12:09:49

1 MR. ACKERMAN: We certainly will try. I want
2 to make sure we're not obligated to produce a document over
3 a DOJ or DEA objection even if there is no way to clarify
4 whether they are releasing the objections.

12:10:04 5 SPECIAL MASTER COHEN: So I mean are we
6 talking -- is their interest because they were part of a
7 Task Force? Why do they have an interest in this at all?

8 MR. ACKERMAN: They work cooperatively with
9 law enforcement in --

12:10:17 10 SPECIAL MASTER COHEN: What is it --

11 MR. ACKERMAN: -- law enforcement officers.
12 They are -- there are specific officers in Summit and Akron
13 who are basically assigned to work with the DEA.

14 SPECIAL MASTER COHEN: Right. I'm asking what
12:10:28 15 is it the DEA, DOJ is concerned about divulging?

16 MR. ACKERMAN: I can't speak for them. I
17 don't know. We've only received instructions from them to
18 claw back certain documents that have been produced that
19 maybe have been made marked law enforcement sensitive or DEA
12:10:46 20 sensitive and for other information from that they have
21 provided to the law enforcement agencies. I just can't
22 speak for DEA on this point.

23 SPECIAL MASTER COHEN: All right. Let -- go
24 forward in this way. You're going to identify 2000
12:11:00 25 documents. If seven of them are DEA sensitive, then it's a

1 nonissue. If half of them are, then it is an issue. So
2 let's just go forward with this as it is now.

3 MS. WU: I'll just note that we have some
4 separate privilege logs from Plaintiffs, which are based on
12:11:14 5 DEA privilege claims and we're happy to stay away from those
6 documents for purposes of this exercise to simplify.

7 SPECIAL MASTER COHEN: Thank you.

8 MR. SHKOLNIK: Special Master Cohen, Hunter
9 Shkolnik for Cuyahoga.

12:11:25 10 You've ordered that 2000 be identified. If we want to
11 do this process fast, I would ask that the directive be that
12 it's all not dumped on one of the four, that it should be
13 somehow evenly dispersed. Otherwise, we won't get them done
14 as quickly as you would like. So if that type of
12:11:43 15 consideration would be made as part of the directive, we
16 would appreciate it.

17 MS. WU: I will tell you that we may have a
18 larger sample for Cleveland because Cleveland has the
19 largest number of claims. And also from what we've seen so
12:11:56 20 far, the most suspect. So just in full disclosure, there
21 may be a larger sampling from Cleveland just based on what
22 we've seen in the documents and heard in deposition
23 testimony thus far.

24 SPECIAL MASTER COHEN: All right. That's --
12:12:06 25 to get --

1 MR. PIFKO: Factually, her letter -- I'm --

2 SPECIAL MASTER COHEN: One second. One

3 second.

4 To get to where you need to be, you don't need them

12:12:17 5 from Cleveland or anybody else. So I'm going to put a

6 restriction that no more than 60 percent as to any given

7 Plaintiff.

8 MR. ACKERMAN: The process could go quicker if

9 it was only 1,000 documents. Sorry. David Ackerman.

12:12:30 10 (Laughter.)

11 SPECIAL MASTER COHEN: My ruling stands.

12 MR. GALLUCCI: Special Master, Cohen, Frank

13 Gallucci again.

14 What is the ultimate decision with regard to redaction

12:12:39 15 of law enforcement officers since we don't know who is

16 undercover versus confidential informant? We discussed it,

17 but I don't believe we reached a conclusion.

18 SPECIAL MASTER COHEN: Yeah, I'm -- if you

19 want to take the time to redact all the names of the

12:12:57 20 officers, you can do that. I'm not seeing that it's as

21 vital as the other information, given the arguments I've

22 heard.

23 MR. GALLUCCI: Thank you.

24 MS. ROITMAN: Special Master, if an officer is

12:13:08 25 actually making an arrest, at that point, the report shows

1 that if an officer's making an arrest, he's not undercover
2 anymore. Carol pointed that out.

3 MR. GALLUCCI: The name is still an undercover
4 officer. It's a particularly sensitive issue to Cuyahoga
12:13:26 5 County, in that a member of their law enforcement team was
6 recently identified, ended up in the hospital and almost
7 killed.

8 MS. ROITMAN: I'm certainly not advocating for
9 that.

10 MR. GALLUCCI: That's what happens when the
11 names get out.

12 SPECIAL MASTER COHEN: The officers' names are
13 redacted.

14 MS. WU: Special Master Cohen, this is Laura
12:13:44 15 Wu for McKesson.

16 I'm happy to share that we can strike or defer one of
17 the law enforcement-related agenda items. That's Agenda
18 Item Number 132, which is a motion to compel production of
19 documents from Summit and Akron. And David Ackerman and I
12:14:00 20 have spoken. While these issues have been raised
21 previously, we're going to continue our conference on this
22 issue and would be happy to defer that issue until next
23 week.

24 SPECIAL MASTER COHEN: Let me first ask you --
12:14:14 25 I was going to turn to that.

1 I assume that what I just said fully addresses 130 and
2 131.

3 MS. WU: In fact, based on Mr. Pifko's letter
4 of Monday stating that Cleveland would not produce the
12:14:33 5 documents based on the law enforcement privilege claim, I
6 believe that those documents should be logged if that is the
7 case because they -- those documents have not been logged.
8 And that's with regard to the Cleveland motion to compel,
9 which is Number 131 on the agenda.

12:14:52 10 MR. PIFKO: Of course, anything that we're
11 asserting a privilege over will be on the log. To the
12 extent it hasn't been on the log, it's because it hasn't
13 been produced yet.

14 SPECIAL MASTER COHEN: Okay. I think that
12:15:01 15 we're done with 131, 130 and 132.

16 MR. WU: Special Master Cohen, so while I'm up
17 here, there was an issue which was raised about DEA
18 discovery, Agenda Item Number 117. The Defendant's motion
19 to take the depositions of Detectives Leonard and Prince.
12:15:23 20 This is a related issue.

21 As you will recall, Defendants moved in order to take
22 the depositions of Detectives Leonard and Prince, who are
23 two of the Track One law enforcement team members, who do
24 have ties to DEA through Task Force assignments, there is a
12:15:44 25 pending Touhy request for each of those depositions.

1 However, given the time left in discovery, we renew our
2 request to move forward with the portions of those
3 depositions, which are not subject to any Touhy -- Touhy
4 clearance issue so that we may complete those depositions
5 before January 25th.

6 SPECIAL MASTER COHEN: So you --

7 MS. WU: Recognizing we may need to reopen
8 them once Touhy issues are resolved.

9 SPECIAL MASTER COHEN: You're jumping to
10 Agenda Item Number 117. What we did with that was to kick
11 the can down the road very purposely for a week, hoping that
12 Congress and the President would come to some agreement,
13 which has not occurred and, therefore, we don't have a Touhy
14 response from the Government.

15 And given deadlines, I don't see any other option,
16 unless somebody's got a good idea. I'm happy to see to --
17 except to let the depositions go forward and for folks to
18 try to tap dance around the Touhy issues.

19 MS. WU: Special Master Cohen, we believe that
20 is the appropriate course. Natalie Waites is the civil
21 fraud DOJ attorney who contacted me yesterday, and as I told
22 her and shared with the parties, I agreed that I would
23 report back to her following your ruling on this issue so
24 that DOJ and DEA won't be advised of the situation with
25 regard to these witnesses.

1 SPECIAL MASTER COHEN: Anybody have a good
2 idea?

3 MR. ACKERMAN: The only idea I would add --
4 this is David Ackerman. The only idea I would add would be
12:17:17 5 to schedule these later in the -- or as close to January
6 25th as we can so that we can give the Government enough
7 time if we can.

8 SPECIAL MASTER COHEN: That's actually a good
9 point. And let me say this, which is a more broad
12:17:29 10 observation.

11 I've gotten, I think, two, maybe three different
12 requests by e-mail from parties saying we are in agreement.
13 Always great words to hear. We are in agreement, we were in
14 disagreement as to what -- as to whose depositions would be
12:17:47 15 taken. But, we are now in agreement and we -- the
16 Plaintiffs and Defendants agree that these six folks, we
17 will depose, but we'd like permission to take those
18 depositions after the January 25th cut off.

19 And I, in every instance, said that's fine with me.
12:18:03 20 If you guys agree that doesn't lead to a fight later on or
21 coming back to the Court and the Court saying wait a minute,
22 there was a deadline, why are you deposing folks after that
23 deadline, if you're in agreement, I don't have a problem
24 with that. I should know about it. You should pass it by
12:18:17 25 me, but I don't have a problem with that.

1 One way to deal with this might be to agree to, I
2 suggest, that you agree to proceed that way, which is to say
3 if, God forbid, a month from now, we still don't have Touhy
4 responses and the Government is still in furlough, then
5 you're going to have to do the tap dance. But let's set
6 these depositions for some late date, even after the January
7 25th deadline so we can try to avoid the issue of having to
8 recall them after Touhy decisions get made.

9 MS. WU: Special Master Cohen, we understand
10 those issues and certainly favor efficiency. However, given
11 the importance of these witnesses and the late date and the
12 schedule, we feel we need to move forward, especially in
13 light of the expert deadlines which are right around the
14 corner.

15 SPECIAL MASTER COHEN: Anybody have some issue
16 that isn't important and critical? I'm just curious because
17 I haven't heard one yet.

18 (Laughter.)

19 COUNSEL: Confidentiality designations, your
20 Honor.

21 (Laughter.)

22 MS. WU: So I do want to be clear that we --
23 that we Defendants want to move to schedule these
24 depositions before the January 25th cut off, and that I'll
25 be happy to cooperate with Plaintiff's counsel in order to

1 do that.

2 SPECIAL MASTER COHEN: Remind me who these
3 fellows are, law enforcement?

4 MS. WU: It's Detectives Leonard from Akron
12:19:34 5 and Prince from Cleveland.

6 SPECIAL MASTER COHEN: And what do they do?

7 MS. WU: They are Narcotics Detectives. And
8 as I understand it, they have had assignments to DEA Task
9 Forces in recent years and, therefore, the DEA has
12:19:48 10 identified that Touhy clearance is required for these
11 witnesses, and I'll note that these are witnesses that
12 Plaintiffs have put forth as people with the greatest
13 knowledge of diversion in the Track One jurisdiction.

14 SPECIAL MASTER COHEN: All right.

12:20:03 15 If you're not willing to agree to have them occur
16 after the 25th and thereby avoid -- and thereby increase the
17 likelihood that Touhy rulings are received, these will take
18 place the last week of discovery.

19 Anything else on 117? Thank you.

12:20:33 20 I think we crossed off Agenda Item Numbers 130, 131
21 and 132 as well as 117. That brings us to Agenda Item 133.

22 I believe I issued a written ruling on this one, and
23 so I don't think there's anything more to say today unless
24 someone waves their hand.

12:21:05 25 Seeing none, we'll move to Agenda Item 134. I think I

1 received a -- I don't remember. I think I received an
2 e-mail last night, early this morning, saying that we didn't
3 need to address this because there had been some agreement
4 on the topic or at least agreement to meet and confer and
12:21:27 5 kick it down the road.

6 MS. McCLURE: Your Honor, I would like to
7 provide some -- Shannon McClure, ABC, on behalf of
8 Defendants with respect to Item 134, the SACWIS issue.

9 I'd like to provide a little bit of background that
12:21:41 10 explains the e-mail you received last night and then get
11 some guidance on a moving-forward basis.

12 SACWIS is the State Wide Automatic Welfare Information
13 System, and there are two, essentially, issues that the
14 Defense wants from this. One is the data set itself, to the
12:22:01 15 extent that the listed cases involved substance abuse; and
16 then for those cases, the case note files and activity logs
17 for the substance abuse-related SACWIS entries.

18 We took the deposition of Cabot on 11-2.

19 SPECIAL MASTER COHEN: Sorry. Who?

12:22:18 20 MS. McCLURE: Cabot. He's a child welfare
21 DCFS-related witness.

22 He indicated that they -- that this data is maintained
23 and that notes are made in the data set with respect to the
24 substance abuse, those child welfare removals that involved
12:22:36 25 substance abuse.

1 On the 13th of November, we took the deposition of
2 Weiskatel, who had indicated that a couple years -- of years
3 ago, it became the rule that the parent's or child's drug of
4 choice that led to a removal, or was involved in a removal,
12:22:50 5 had to be noted in the activity case note file and activity
6 log.

7 So this is an important issue because Plaintiffs Rog
8 18 notes that there's \$219 million worth of alleged damages
9 that the Plaintiffs are contending relate to Child and
12:23:11 10 Family Services.

11 So our ability to get into these documents and
12 understand which of these involved substance abuse and which
13 of the ones that involved substance abuse, which involved
14 opioids, and of those which involve prescriptions is
12:23:26 15 important.

16 We issued a letter to the Plaintiffs following up on
17 the Cabot deposition on the 13th and on the Weiskatel
18 deposition on the 19th requesting this information. We
19 received zero response.

12:23:35 20 Therefore, on the 7th, my colleague, Kelly Hibbert,
21 put this issue on the agenda to you with a letter itemizing
22 what it was we wanted.

23 Yesterday on the 8th was the Merriman deposition,
24 another deposition that my partner, Eric Alexander, took
12:23:52 25 that relates to child welfare issues.

1 That deposition concluded at 5:20 P.M. At the
2 conclusion of that deposition, just a couple of, not even
3 two hours later, we received this letter that indicates
4 basically we produced the documents, there is no issue here.
12:24:10 5 They would have known about it had they met and conferred
6 with us.

7 So respectfully we did attempt to meet and confer. We
8 sent several letters, which went completely unresponded to.
9 They're now contending that a document that was produced
12:24:23 10 months ago is in fact the data set -- data set and,
11 therefore, we have it.

12 However, so one, we could have avoided or at least
13 narrowed this topic had we received any response to our
14 numerous letters on this issue prior to last night.

12:24:40 15 And we could have, had we known about the fact that
16 they were contending that this document was the one we were
17 seeking or was at least one of the ones we were seeking,
18 could have asked David Merriman about it yesterday in his
19 deposition prior to its conclusion.

12:24:54 20 It also seems that the document they're pointing to,
21 which is an Excel spreadsheet that contains numerous tabs,
22 seems to have been a download of a data set. It's not
23 entirely clear what the document is, whether it is, in fact,
24 a download of an entire data set, whether there were
12:25:13 25 parameters or coding selected by someone. And so we have a

1 number of issues and questions about how this document was
2 created, what it is, why they think that this document
3 satisfies the Item Number 134 requests for the data set.

4 But I note that by definition, it's only a document
12:25:33 5 that's an Excel spreadsheet. To my knowledge, it does not
6 even contend to contain all the case note or activity log
7 files. Nevertheless, the point ultimately is, your Honor,
8 there is more to do. There is more to -- more questions
9 that we have, more answers that are needed. But I note that
12:25:50 10 it's unfortunate that it seems that the document was
11 produced just a couple of hours after a witness' testimony,
12 who, I believe, would have had the ability to answer some of
13 the questions if indeed they had responded to our numerous
14 letters on the topic of the SACWIS database and how we
12:26:11 15 needed it.

16 So, nevertheless, we do have a number of questions
17 about the documents that they identified that they say
18 satisfies our requests for the data set and the case note
19 and activity log. And so we'll need to come back to your
12:26:27 20 Honor on this point but wanted to provide the background as
21 to why this issue was before you in the first place and how
22 we believe it could have been at least avoided or at least
23 narrowed prior to today's hearing.

24 MR. SHKOLNIK: Good afternoon, Special Master
12:26:51 25 Cohen. Hunter Shkolnik again for Cuyahoga County.

1 I think the gist of what I just heard was we gave them
2 the document that they're looking for, the spreadsheet, the
3 SACWIS spreadsheet. We confirmed it in our letter. They
4 did not ask for a single meet and confer. They did not ever
12:27:05 5 put this on any type of request to us that they didn't have
6 the SACWIS database. Had they done that, we would have told
7 them that.

8 Like most of the Defendants in this case and most of
9 the Plaintiffs, we send letters immediately after a
12:27:20 10 deposition. We confirm that we are asking for things. Then
11 we actually go about asking for meet and confer and
12 discussing it with the other side. And before we ever bring
13 it to you, we try to have somewhat of a discussion. That
14 was not done here.

12:27:34 15 We received the letter on the 7th for the first time
16 about the concern about this issue. We responded within 24
17 hours.

18 We did produce SACWIS database. Whether they'd like
19 it or not, that's what it is. It was produced on August --
12:27:52 20 sorry -- it was produced on August 27, 2018. They had it
21 for all of these depositions. I don't know what more we
22 want -- or they wanted from us there.

23 With respect to the individual files, that's a
24 different issue. This is the first time they're asking for
12:28:08 25 the individual children's files that support the SACWIS --

1 you know, that are from the SACWIS database. If that's an
2 issue now, it's kind of late, but we'll work with them, and
3 we said it in our letter yesterday. If they pick 25, we can
4 work with them and show them what's there. If they want a
5 few more than that, maybe that's an option. We'll take your
6 directive.

7 Thank you very much.

8 SPECIAL MASTER COHEN: All right. So I don't
9 need to hear more on this.

10 What I'm hearing is, first of all, there's been a
11 miscommunication. Ain't the first time that's happened.

12 And second of all, you're going to go forward and
13 confer and try to iron out what needs to get ironed out.

14 It does concern me that Defendants think that they,
15 from what I understand, asked twice about this, and quote,
16 unquote, there was no response. So something is wrong. I
17 don't want to figure out what it was, except that something
18 is wrong. And what I'm hearing is wrong is that there's a
19 communication failure between the Plaintiffs and Defendants
20 when something is asked to be identified.

21 As I said, if you make it easier for each other, it
22 will -- it will be easier for everyone and me. So I'm
23 urging you again to try to avoid that.

24 Some of it is unavoidable, I understand, in a
25 litigation of this size. So I think that -- I think

1 everyone's agreeing on this topic that you need to iron out
2 the remaining issues.

3 MS. McCLURE: Yes, your Honor, we will do so.
4 And we did, in fact, write to them on the 19th and the 13th
12:29:38 5 of December and did not receive a response.

6 With respect to the offer to provide 25 files, a
7 sampling of the files for this purpose is wholly
8 insufficient, but we will discuss that with them in our
9 future meet and confers but wanted to pre-flag for the Court
12:29:53 10 that we do not anticipate accepting samples.

11 SPECIAL MASTER COHEN: Okay.

12 We'll move on to Item Number 135, and I am -- I think
13 Plaintiffs assert that this is unripe. I think you've only
14 heard from one side.

12:30:08 15 MR. PYSER: Yes. Your Honor, Steven Pyser,
16 Williams and Connolly for Cardinal Health. I'll be
17 addressing this issue.

18 The claim that this issue wasn't ripe, we disagree
19 with. I'm looking here in an e-mail from my partner, Paul
12:30:25 20 Boehm, re-transmitting the letter -- I believe this is about
21 the certain document production, and he was told that if it
22 isn't resolved on Monday, we intend to add a new agenda
23 item.

24 So I believe -- I don't have the original
12:30:41 25 communication, but I believe Plaintiffs were told, it's

1 certainly implicit as we're sending these letters back and
2 forth that these are important issues. And as to why
3 they're important, this is a deposition that happened on
4 December 12th. Documents were identified in the deposition.
12:30:58 5 Those documents included budget requests, autopsy tracking
6 reports on opioid-related autopsies, information and
7 tracking data for opioid-related expenditures for Child and
8 Family Services and County Jail. And really, all we're
9 asking is a pretty simple request.

12:31:17 10 If these have been produced, say so. But, based on
11 our review, these documents, specifically identified almost
12 a month ago by our witness, were not produced before the
13 deposition. Still to this date, there's been no production
14 of them, and they should be produced immediately because
12:31:35 15 they're clearly relevant documents.

16 And we recently had a conversation about Cardinal
17 Health and the need to produce documents, and we understand
18 that, and we are doing so, and we're actively engaged in
19 that --

12:31:47 20 SPECIAL MASTER COHEN: Yeah, I agree with you.
21 I'm with you. Let's hear it.

22 MR. SHKOLNIK: Special Master Cohen, Hunter
23 Shkolnik again.

24 Counsel references the e-mail from Mr. Boehm. It was
12:31:56 25 actually a letter that said we were to respond by the end of

1 yesterday, January 8th.

2 Our letter back identifying each of the documents and
3 where they are in the database, that's been produced, went
4 out some time after midnight because we were working on
12:32:14 5 getting the actual Bates numbers. So they gave us a
6 deadline of the 8th. They put it on the agenda on the 7th.
7 We responded by either late in the 8th or early of the 9th,
8 and we've literally gone through and identified by Bates
9 numbers each of the documents they have requested and the
12:32:32 10 fact that they were produced.

11 If it's -- everyone was rushing to get on your agenda
12 because they had face time today. It would have been easier
13 to say respond by the 8th, and if you don't do it, we'll put
14 it on next week's agenda, but they didn't want that. So we
12:32:48 15 have a detailed letter --

16 SPECIAL MASTER COHEN: Ignoring the "Hurry,
17 everybody, to try and get something on the agenda," what I'm
18 hearing is what they've asked for, you've provided.

19 MR. SHKOLNIK: Yes. And we gave them a letter
12:33:02 20 detailing with Bates numbers, quite a bit of them.

21 SPECIAL MASTER COHEN: Okay.

22 MR. BOEHM: I need to weigh in on this. This
23 is Paul Boehm. Let me correct a couple of things that just
24 aren't true.

12:33:09 25 One, that the e-mail correspondence that my partner,

1 Mr. Pyser, referenced is not the letter itself. It was a
2 re-transmission of a letter.

3 SPECIAL MASTER COHEN: Paul, Paul, I'm going
4 to -- Paul, I'm going to interrupt you. Paul, I don't care.
12:33:24 5 All I care about is whether the documents that you want have
6 been produced, which is what you care about. And --

7 MR. BOEHM: That's the next thing.

8 SPECIAL MASTER COHEN: I'm told they
9 identified last night the documents that you wanted to be
12:33:37 10 produced, and I assume that you haven't had a chance to
11 determine whether that's true. If you have, fine, but it
12 sounds like the way to move forward most quickly is for you
13 to have time to review their response to your request, and
14 then you can tell me next week if they're wrong.

12:33:56 15 MR. BOEHM: But I need to --

16 SPECIAL MASTER COHEN: I don't want to get
17 into the details. I don't want to get into the details of
18 who wrote what, when, or whether it was an e-mail or a
19 letter.

12:34:05 20 MR. BOEHM: I understand. I understand,
21 Special Master Cohen. I just -- I need to correct
22 representations that were made with respect to the -- we
23 got -- we have a long conversation Mr. Pyser participated in
24 about the discovery and what we need to do and what our
12:34:18 25 obligations are, and it's a two-way street. The letter we

1 got back doesn't do what Mr. Shkolnik has said. It's says,
2 "Here are a couple documents, and then we're going to search
3 and produce different documents we have not already
4 produced," and it is January 9th. And we have a discovery
12:34:32 5 cut-off of January 25th. And there are some other issues I
6 guess coming up on the agenda that fit into this same
7 bucket.

8 Look, we can have a conversation. We will. We're
9 always eager to have conversations that will advance
12:34:46 10 Plaintiffs' productions, but there are some significant
11 gaps. There are gaps in this bucket. We will take
12 direction to meet and confer, but any suggestion that it's
13 resolved and they've given us all the information simply
14 isn't correct and we can revisit this again next week, but
12:35:00 15 time is short, and we are going to need an order if we can't
16 get Plaintiffs to agree to produce it right away because we
17 don't have very much time left.

18 SPECIAL MASTER COHEN: I'll say this. It
19 appears to me that the documents that you've asked for
12:35:16 20 should be produced.

21 It sounds like Mr. Shkolnik has said they have been
22 produced; to the extent they haven't, we're looking for them
23 and will produce them.

24 So I think that's all that needs to be said. It
12:35:29 25 should be produced. Plaintiffs say they have and will chase

1 after it, it should happen as quickly as possible.

2 Anything else?

3 MR. PYSER: Special Master, Cohen, we would
4 just add that the same principle -- and I understand you're
12:35:43 5 going to get written submissions on this. The same
6 principle should apply to Agenda Item Number 136, which
7 follows the same process where we have been requesting
8 documents since November 30th that are extremely important.
9 And every time we hear, "We'll get them to you get, we'll
12:35:57 10 them to you in the future," and the documents just aren't
11 produced. So I understand that's on the upcoming agenda
12 items, but we think that flows directly along with 135, and
13 we'd ask the same principle apply.

14 MR. SHKOLNIK: With respect to 136, it was our
12:36:13 15 understanding that we had until Friday to respond. And I
16 could be wrong on that. Once again, this is another item
17 rushed to the agenda, and we spoke about it and we said we
18 needed until Friday to respond if there were any additional
19 items responsive.

12:36:31 20 By the way, we got their request on the 7th.

21 SPECIAL MASTER COHEN: Yeah. I'm not
22 addressing that now, but again to the extent that it appears
23 a party has made a legitimate request for a document,
24 especially one that's been referred to by a deponent, the
12:36:48 25 other side should try to get that document out as soon as

1 possible.

2 MR. SHKOLNIK: The one issue with the Adams
3 documents and what documents we have in our possession and
4 don't, it's been an issue we have discussed with counsel.
12:37:00 5 But we are on top of this. We got the request less than two
6 days ago. They'll have an answer Friday.

7 MR. PYSER: This letter came two days ago, but
8 the history laid out in the letter --

9 SPECIAL MASTER COHEN: I don't need a history.
12:37:12 10 We're moving on to document -- excuse me, Agenda Item Number
11 138. All right.

12 Let's start with what I'm not going to do. I'm not
13 going to strike the depo. That would be excessive. And
14 frankly, my interest there is more for the deponent than the
12:37:48 15 parties.

16 Something funny is going on, and I don't want anything
17 funny going on in the future. I want there to be an
18 understanding and agreement as to how things go forward in
19 this sort of circumstance. I get both sides' position.

12:38:14 20 My question is if there is a former employee, what's
21 going to happen every time, or what the rules are for
22 certain kinds of former employees? Defendants say there's
23 an order and a rule and that's what has to be followed.
24 Plaintiff says that rule didn't apply in these
12:38:37 25 circumstances.

1 There needs to be a clarification on how that gets
2 dealt with, former employees.

3 MS. SINGER: Special Master Cohen -- oh.

4 SPECIAL MASTER COHEN: I get that the former
12:38:46 5 employee in this case had at some point made clear they
6 didn't want to work with the former employer and didn't want
7 counsel either provided by their former employer or private.
8 And that kind of takes it outside of the ambit, I think, at
9 least as to some extent, to an understandable extent, with
12:39:08 10 regard to what the CMO says. And I don't feel like it would
11 be productive for me to preside over the negotiation of what
12 may have to be an amendment to the case management order or
13 an understanding between the parties. I don't want to do
14 that now with you. You can do that yourselves. You'll be
12:39:26 15 better off doing it by yourselves.

16 So I don't need to hear a lot. I've seen what's gone
17 on. It needs to be addressed going forward. I'll take a
18 minute or two of comment if you think it's necessary.

19 MS. ROITMAN: Thank you, Special Master Cohen.
12:39:42 20 This is Sara Roitman on behalf of Purdue.

21 We hear you about your ruling, and we're not going to
22 revisit that. The one thing I would ask, however, is we
23 agree with you that something funny happened with this
24 deposition, that we would ask if you are not inclined to
12:39:58 25 strike the entire deposition, that you at least strike the

1 portion where Purdue was not on the line and was not able to
2 participate in the deposition. I think it was about the
3 first 30 minutes of it. And that thereupon, after we were
4 quickly made aware of the deposition, got someone on the
12:40:15 5 line or at least able to be logging objections; albeit, we
6 weren't able to see any of the documents, and then were
7 later able to participate in a limited fashion.

8 But I think that that might achieve the purpose here
9 of -- I understand you don't want to subject Mr. Horowitz to
12:40:34 10 a second deposition and perhaps are reluctant to strike the
11 entire transcript. But, I think that that is a common kind
12 of middle ground for addressing what we think are really
13 serious concerns about what happened with this deposition,
14 both in terms of a failure to comply with the process that
12:40:53 15 is in place in the deposition protocol in terms of how to
16 reach out to make requests about party depositions,
17 including former witnesses, and the fact that the parties
18 were actively meeting and conferring about this issue.

19 We had even sent you an update the day we met and
12:41:08 20 conferred saying the issue is still open, both sides are
21 going to get back to each other, and then we proceeded in
22 good faith thinking that that was the status of things.
23 Unbeknownst to us, different communications were being made
24 to the witness, and then obviously, this deposition happened
12:41:25 25 on January 3rd.

1 With respect to the idea of how we address this going
2 forward, happy to kind of talk about that in relation to the
3 revisions we were doing to Track Two, and I think if it's
4 going to have broader ramifications, I think our position is
5 that the current deposition protocol already has a fairly
6 simple process in place that has been working, with the
7 exception of Mr. Horowitz, has actually been working with
8 all others that I'm aware of, former employees, that both
9 sides have been asking the parties. Certainly I think both
10 Plaintiffs and Defendants have been deposing a lot of former
11 employees. And the process that we have all been complying
12 with, and the process that Plaintiffs have used for the 14
13 other witnesses that they asked for for Purdue, was first
14 reach out to the party, have an informal exchange of whether
15 they want to depose the witness. We talk about scheduling.
16 In the event we can't work it out, it obviously gets
17 presented to you. That process I think has worked fairly
18 well. I can't imagine, can't recall another instance like
19 this.

20 Mr. Horowitz is unique in the sense that Plaintiffs
21 didn't follow that process here. But, there's nothing
22 unique about him as a witness that would mean they couldn't
23 have followed it here.

24 SPECIAL MASTER COHEN: Okay.

25 I think we're getting a little bit into what I don't

1 want to get into. Let me hear briefly from Plaintiffs.

2 MS. SINGER: So I hear your point that you
3 don't want this reargued, and I won't rise to the
4 point-counter-point conversation. I want to speak to the
12:43:00 5 suggestion that there was something funny here.

6 Purdue was notified of this deposition from the very
7 get-go but Special Master Cohen. I see you shaking your
8 head, but there has been a suggestion that something was
9 done here.

12:43:14 10 This witness was effectively a whistle blower. He
11 indicated from the get-go that he was not working with
12 Purdue, even though he immediately called Purdue to let them
13 know about the subpoena and even talked to in-house counsel
14 the day before the deposition. This was always on the
12:43:29 15 calendar, such that four other Defendants participated in
16 the deposition.

17 So I think the suggestion here that somehow something
18 was funny, to use your word, is just not fair or an accurate
19 reflection of what happened. Purdue had lots of
12:43:47 20 opportunities to intercede if this deposition should -- if
21 they were going to move to quash or take some other action.

22 As to what should happen with the depo -- oh, and I'm
23 sorry. In terms of the protocol itself, I don't think we've
24 had another instance where a witness was effectively a
12:44:04 25 whistle blower and said I want to come forward. I don't

1 want to come forward through my former employer. As he
2 testified at the hearing, we encouraged him to get counsel.
3 He didn't feel that was necessary.

4 The one fact he testified to was that we told him, we
12:44:18 5 encouraged him to do that, said we couldn't offer him legal
6 advice but instructed him to testify truthfully.

7 So the record here is very clear on that history. If
8 there are specific questions that Purdue would have asked in
9 that first half hour, which by the way, four other
12:44:34 10 Defendants were present at, happy to have a meet-and-confer
11 with them about that or if there's specific testimony they
12 think was improper or could have been addressed in the first
13 half hour -- I don't think there was anything of
14 substance -- but they knew about the deposition, they didn't
12:44:48 15 stop it, and the fact that anything should be changed about
16 it I think is unwarranted.

17 SPECIAL MASTER COHEN: Yeah.

18 So I'm going to give Purdue a standing objection to
19 the fact that they weren't there for that first half hour.

12:45:03 20 MS. ROITMAN: We would ask, your Honor, that
21 that portion of it be struck.

22 SPECIAL MASTER COHEN: No, I'm not striking
23 it. I'm saying you have a standing objection to it.

24 MS. ROITMAN: Oh. I misunderstood.

12:45:09 25 SPECIAL MASTER COHEN: And that can be the

1 basis for which you would move at some future time for that
2 portion of the deposition not to be used, and the Court will
3 rule on it at that time.

4 Going forward, even if somebody is considered to be a
12:45:26 5 whistle blower, of course, we only have two or three weeks
6 left in this case, the CMO needs to be adhered to strictly.
7 To the extent that that needs to get changed going forward
8 for Track Two, you all are going to chat about that.

9 Anything else?

12:45:44 10 MS. SINGER: I do think, Special Master Cohen,
11 that we skipped over Item 137, which was the custodial file
12 of Robin Abrams.

13 SPECIAL MASTER COHEN: I said 137 but was
14 looking at 138. Hold on just a minute. My computer just
12:46:12 15 freaked out. Okay.

16 So we just addressed Agenda Item 138. Moving back to
17 138, which has to do with an item we've addressed before,
18 which is the deposition of Robin Abrams.

19 Go ahead, Ms. Singer.

12:46:58 20 MS. SINGER: So before I start with the
21 argument, and I think there are two pieces of it: One, the
22 production of Ms. Abrams' custodial file; the other, the
23 deposition. And I think they are separate questions for
24 you.

12:47:08 25 There are, I think in order to speak to the particular

1 circumstances here -- and we recognize that there is a
2 significant burden in requesting the custodial file of an
3 in-house counsel. So I think to -- to explain to you why we
4 think it's both appropriate and necessary here, I'd like
5 permission to go off the record so we can share some
6 confidential information.

7 MR. LAFATA: Special Master Cohen, this is
8 Paul Lafata.

9 With respect to the request, I don't know why we would
10 go off the record. If we can -- we can -- what we can
11 agree, it should be subject to protective order so we
12 actually have a record of what's discussed in the
13 proceedings even if it's not a public record.

14 MS. SINGER: That's fine.

15 SPECIAL MASTER COHEN: Well, here's my
16 concern. Like we did with Mr. Farrell's inadvertent comment
17 in the beginning, we can put this part of the record under
18 seal or something like that. I don't know who's on the
19 phone. I don't even know who's in the courtroom. I don't
20 know everybody who's in the courtroom.

21 And so I'm concerned about, unless everybody here
22 agrees, I just want to make sure everyone's in agreement as
23 to how we're going to proceed right now if you want to talk
24 about some information that is confidential or privileged.

25 MR. LAFATA: Well, I just don't understand the

1 request to go off the record. There's one thing to have an
2 on-the-record discussion that is confidential for the Court,
3 but a separate request to stop transcribing the proceedings.
4 Maybe --

12:48:35

5 MS. SINGER: That's fine.

6 SPECIAL MASTER COHEN: No.

12:48:46

7 I'm saying it will be on the record. It will be put
8 under seal and marked confidential, but I don't know who
9 else is listening, and it's conceivable that if there is
10 some confidential information discussed later that is going
11 to be marked confidential or under seal, that it won't
12 matter because someone else is going to hear it. I don't
13 know how to deal with that, except to take the phone off and
14 close the door.

12:48:59

15 MR. LAFATA: I believe you requested a list of
16 everyone who would have been on the telephone before the
17 proceeding today. If the -- if you want to make an inquiry,
18 if there's someone on the phone who's not on that list or
19 hasn't announced themselves and is not subject to protective
12:49:11 20 order, we can make that inquiry. You can certainly do that.
21 But -- or as long as we have an understanding of counsel
22 that the discussion today is not a waiver of the protective
23 order.

12:49:30

24 MS. SINGER: Special Master Cohen, you can
25 also direct that this conversation is confidential. That

1 anyone on the phone line or in the courtroom is directed not
2 to share this information.

3 MR. LAFATA: We can always do it at side bar
4 with the Court Reporter without the telephone if --

12:49:46 5 SPECIAL MASTER COHEN: Let's do that. Let's
6 do a side bar. I just want to be excessively careful. It
7 probably is excessive, but I prefer to be excessively
8 careful than not careful enough. So --

9 MR. WEINBERGER: We're ten minutes from
12:50:02 10 breaking. Why don't we just not continue the telephone
11 conference and then we can just deal with it in the
12 courtroom?

13 A VOICE: Disconnect the phone now.

14 SPECIAL MASTER COHEN: Yeah. We're probably
12:50:19 15 five minutes from breaking. All right.

16 Everybody, on the phone, I'm going to disconnect you.
17 If you want to find out what happened, you'll be able to if
18 you're allowed to see the transcript. And thank you for
19 calling in. We're going to try to resume at 1:45 if you
12:50:42 20 want to call back in.

21 MS. SINGER: All right.

22 MR. LAFATA: Special Master Cohen, I'm also
23 not sure, frankly, who everyone is in the gallery, in the
24 courtroom. So I don't know if they are subject to
12:51:05 25 protective order. I think a side bar would be a better

1 approach.

2 SPECIAL MASTER COHEN: Side bar.

3 **(Proceedings were held at side bar under seal.)**

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(Thereupon, a luncheon recess was had.)

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1 WEDNESDAY SESSION, JANUARY 9, 2019, AT 1:48 P.M.

2 SPECIAL MASTER COHEN: Welcome back,
3 everybody.

4 MR. WEINBERGER: David, can I just interrupt
13:56:28 5 for just a second? If possible --

6 SPECIAL MASTER COHEN: Let me just -- are
7 people on the phone? Is anybody on the phone? Were people
8 going to call back in? Does anybody know if folks were
9 going to try to call back in?

13:56:41 10 MR. WEINBERGER: I can't speak for anyone in
11 particular, but I suspect yeah.

12 COURT REPORTER: Katie is the one who places
13 the call to the parties.

14 MS. ROITMAN: I have a colleague, not speaking
13:57:04 15 but listening in, and he says that he cannot hear us.

16 SPECIAL MASTER COHEN: Yeah. I've got to call
17 somebody.

18 (Pause.)

19 SPECIAL MASTER COHEN: Anybody need to say
13:57:38 20 anything not on the record?

21 MR. WEINBERGER: Yes. Peter Weinberger for
22 the Plaintiffs.

23 With hopefully everyone's consent, we'd like to
24 proceed with Item 69 because it's a matter of Linda Singer's
13:57:49 25 handling it, and she's got to catch a plane.

1 And I just have one other short issue that I want to
2 discuss right now. And that --

3 SPECIAL MASTER COHEN: This is off the record?

4 MR. WEINBERGER: No, on the record.

13:58:05 5 SPECIAL MASTER COHEN: We're off the record
6 until I get the call.

7 MR. WEINBERGER: Okay. We can stay off the
8 record and then if necessary, put it on the record.

9 (Discussion held off the record.)

14:01:06 10 SPECIAL MASTER COHEN: Okay. Is anybody on
11 the phone. Can anybody hear me on the phone?

12 A VOICE: Yes.

13 SPECIAL MASTER COHEN: All right.

14 Welcome back. We're reconvening and back on the
14:01:22 15 record. Again, I ask everybody on the phone to please mute
16 yourself unless you're speaking.

17 MR. WEINBERGER: Mr. Boggs has already been
18 deposed as a 30(b)(6) witness without any issues arising
19 that would impact on his deposition as a result of the lack
14:01:42 20 of a Touhy clearance. His deposition has also been
21 scheduled, his fact deposition has been scheduled for next
22 week. We want to proceed with it. And our only concern is
23 that to the extent there's any objection interposed or any
24 decision by the witness to not testify on a particular
14:02:05 25 subject because of the lack of a Touhy letter, that we be

1 permitted to bring him back once -- once we can initiate
2 such a letter with the DOJ.

3 MR. LYNCH: That's patently objectionable,
4 Special Master. If they haven't sent a Touhy letter --

14:02:23 5 SPECIAL MASTER COHEN: First of all, please
6 identify yourself.

7 MR. LYNCH: Oh, sorry.

8 SPECIAL MASTER COHEN: And please talk into
9 the mike.

14:02:27 10 MR. LYNCH: Mark Lynch for McKesson.

11 If they haven't sent a Touhy letter, it's too late.

12 MR. FARRELL: So Paul Farrell. We have sent a
13 Touhy letter. Mr. Bennett responded by stating that they
14 were on furlough. But this belies a bigger point that we've
14:02:43 15 been raising for quite some time. We're --

16 MR. LYNCH: Can I break? The biggest point is
17 we haven't gotten a Touhy letter. They raised holy hell
18 about not getting our Touhy letters but they don't send us
19 their Touhy letters.

14:02:58 20 MR. FARRELL: So the bigger issue is Gary
21 Boggs is a former DEA agent, who now works for McKesson.
22 And so when he has been deposed as a 30(b)(6) witness in the
23 West Virginia Attorney General litigation. And in that
24 transcript, there are questions and answers that go towards
14:03:26 25 his time at the DEA. In addition, I can like make reference

1 to a specific document, MCK MDL 00536449, which are minutes
2 from -- not minutes. I'm sorry -- notes from a meeting
3 between the DEA and McKesson back in 2007, where Mr. Boggs
4 was participating in his role as the DEA.

14:03:58 5 So as you've noted, in our past telephone calls, there
6 has come a big issue as to whether or not he is allowed to
7 discuss his prior role with the DEA. I understand there
8 might be a difference between Mr. Boggs being allowed on
9 behalf of the DEA to speak on behalf of the DEA versus
14:04:24 10 whether or not he's allowed to talk about his prior
11 prosecutions.

12 We were operating under the presumption, as you noted
13 during our last telephone conference, that there is no
14 prohibition to a former DEA agent talking about this.

14:04:40 15 Certainly, Mr. Boggs has on other occasions, and so we --
16 with the understanding that the DOJ may have recently
17 changed its position on whether or not prior employees can
18 talk about their role in the DEA, we recently sent a Touhy
19 request just to make sure that when we talk to Mr. Boggs,
14:05:04 20 we've crossed all of the I's -- crossed all of the T's and
21 dotted all of the I's.

22 SPECIAL MASTER COHEN: All right. How
23 recently? How recently? All right a few things. First of
24 all --

14:05:20 25 MR. LYNCH: Can we find just --

1 SPECIAL MASTER COHEN: Just a minute. Yes,
2 you can. But, I want to make a couple comments.

3 Anybody who sends a Touhy letter copies everybody from
4 now on right away.

14:05:29 5 MR. WEINBERGER: We have.

6 SPECIAL MASTER COHEN: I'm not saying you
7 didn't. I'm just setting down a rule. From now on in this
8 litigation, anybody who sends a Touhy letter, copies
9 everybody else right away. Okay?

14:05:38 10 MR. WEINBERGER: We agree.

11 SPECIAL MASTER COHEN: Go ahead.

12 MR. FARRELL: Sorry, Special Master Cohen.
13 That was sent to Mr. Bennett on the 2nd, and you did tell us
14 to forward them. And I just forwarded it to all Defense
14:05:49 15 counsel. So they now have the Touhy request that was sent
16 for Mr. Boggs as well as Mr. Barber.

17 MR. LYNCH: The second was well into the
18 shutdown. This is a transparent ploy to delay things.

19 MR. WEINBERGER: Oh, come -- well, actually,
14:05:59 20 the opposite.

21 MR. LYNCH: They never sent a Touhy letter
22 until after the shutdown.

23 MR. FARRELL: Hold on. So --

24 SPECIAL MASTER COHEN: Wait a minute. I don't
14:06:11 25 need anything more on this.

1 First of all, I happen to be at lunch. And when I saw
2 the long line down on the seventh floor, I walked to the
3 Terminal Tower to get some lunch there and happened to bump
4 into James Bennett, who is now in the courtroom.

14:06:27 5 And he did not know that this was taking place, which
6 is everybody's fault, including mine. So just a note that
7 whenever there is a status conference in front of me, we
8 should remember to invite the Government to participate.

9 I asked Mr. Bennett if he wouldn't mind stopping by to
14:06:49 10 explain what's going to happen and how, and how we can all
11 work together through these processes, assuming that there
12 is something to work through.

13 And so, Mr. Bennett, if you could get up and explain,
14 first of all, what you are currently allowed and not allowed
14:07:08 15 to do with reference to Touhy; and second of all, let's
16 pretend that this furlough ends tomorrow, what the process
17 would be.

18 MR. BENNETT: Sure.

19 As the Court knows, the parties were aware on December
14:07:21 20 21st appropriations to the federal government lapsed. As a
21 result, a number of federal employees with the Department of
22 Justice and other federal executive agencies have been
23 furloughed. That includes myself.

24 There are some very limited exceptions that allow
14:07:36 25 those employees to work without pay, generally involving

1 criminal or national security type matters.

2 In this particular case, I am not authorized to work
3 on any substantive matters regarding the MDL. My sole
4 purpose for actually being in the office today, which I was
14:07:54 5 exempted only for today, was to request a stay, additional
6 stay of this Court's order of any discovery involving the
7 United States, which we anticipate to file some time this
8 afternoon or early evening.

9 As a result, employees at the DEA, the DOJ, and the
14:08:13 10 FBI are not able to respond to, process, or review, or
11 produce any discovery information at this point in the MDL.

12 Once the furlough ends and appropriations are
13 restored, we have discussed internally and plan to suggest
14 to the parties scrolling back up and responding to those
14:08:36 15 Touhy requests, discovery requests and document productions.

16 We believe the most appropriate way to do that is to
17 receive priority requests from the parties. So, for
18 example, if there's a deposition that's scheduled for the
19 end of January that there needs to be a Touhy authorization,
14:08:51 20 assuming appropriations are restored by that point, we would
21 make that a priority. We believe we can start getting
22 authorization letters out within five days after
23 appropriations being restored. But, we certainly won't be
24 able to respond to the voluminous numerous requests that are
14:09:07 25 pending within a short five-day time period.

1 So it will take us some time to respond to everything,
2 but we would like to work with the Plaintiffs and the
3 Defendants in prioritizing those requests was based on the
4 discovery that is going on at the time.

14:09:22 5 SPECIAL MASTER COHEN: Any questions for
6 Mr. Bennett?

7 MR. FARRELL: Yes, Paul Farrell.

8 The question that is on our minds is when do we need
9 to get a Touhy request? And we had been operating -- we had
14:09:39 10 in mind that we were going to depose Mr. Boggs, which
11 included discussions about Mr. Boggs' role with the DEA in
12 documents that are -- have been disclosed in the case.

13 And so if the Department of Justice is taking the
14 position that no former DEA agent can talk about anything
14:10:02 15 they did while they were with the DEA, then that puts us on
16 a different trajectory.

17 Same with Mr. Barber. Lyndon Barber is now working
18 for Cardinal Health and we have asked for and received a
19 date for his deposition. And so when we go and talk to
14:10:22 20 Mr. Barber, we presumed we were going to be asking him
21 questions about his prosecution among other Defendants,
22 Cardinal Health. So it -- it's of vast importance for us to
23 figure out now whether or not if we proceed with Mr. Boggs
24 next week, and we are precluded from going into anything
14:10:44 25 about his former role with the DEA, we would like the

1 opportunity to come back once the furlough is up and then
2 consider the ramifications or consider the restrictions that
3 the DOJ puts on.

4 But as you noted on the telephone conference --

14:10:59 5 SPECIAL MASTER COHEN: Well, I didn't note
6 exactly what you said I noted. So just can you answer his
7 question?

8 MR. BENNETT: I think I can.

9 So for Department of Justice employees, it's our
14:11:09 10 position that the regulations require them to get
11 authorization to disclose non-public official Department of
12 Justice information.

13 So if you are asking about investigations that are not
14 public, if you're asking about procedures that are not
14:11:24 15 public, if you're asking about policies that are not public,
16 then those things would require prior authorization, whether
17 they are a current employee or a former employee.

18 To the extent that you're asking general questions,
19 like the employment history or about publicly known and
14:11:40 20 available information, then there would not be a requirement
21 for former employees to get a Touhy authorization -- to be
22 authorized to do that.

23 Does that answer the question?

24 SPECIAL MASTER COHEN: It comes as close as I
14:11:51 25 think you're going to be able to come.

1 Let me ask you a question of personal interest. Is
2 there any penalty to a former or present employee if they're
3 asked a question for which Touhy authorization was required
4 and they answer it?

14:12:09 5 MR. BENNETT: I don't know the answer to that
6 question. I never faced the penalty question.

7 SPECIAL MASTER COHEN: All right. Thank you.
8 Anybody else have any other questions for Mr. Bennett?

9 MR. RICE: I don't have a question but I want
14:12:18 10 to -- I sent yesterday a letter to you.

11 SPECIAL MASTER COHEN: This is Joe rice.

12 MR. RICE: I'm sorry.

13 I sent a letter to you and to the news yesterday and
14 to Alex, and yours kicked back when I sent it to you. But
14:12:32 15 it was a request that there not be DOJ and Defendants with
16 Special Master or DOJ from the Plaintiff with the Special
17 Master when we're talking about other people's documents and
18 other people's Touhy requests. So I just want to be sure
19 that that got received and we get some understanding of
14:12:53 20 that.

21 We understand there had been some meetings or
22 discussions between DOJ and the Defendants about depositions
23 and gratuity issues, that Defendants had issued Touhy
24 letters but we also issued Touhy letters on the same people,
14:13:09 25 and we weren't aware of agreements or discussions that were

1 being raised with you.

2 SPECIAL MASTER COHEN: Yeah, I think that when
3 the conversation you're referring to took place, the Touhy
4 submissions had only been made by the Defendants. And so
14:13:23 5 that conversation -- now I may be incorrect, but that was --
6 that was what I believed when that conversation took place.
7 Nonetheless, I take your point.

8 MR. RICE: Fair enough.

9 SPECIAL MASTER COHEN: And you are correct
14:13:35 10 that's how it should go.

11 MR. BENNETT: And, Mr. Rice, we did receive
12 your e-mail. I think you just got my out of office, but I
13 did receive the letter.

14 MR. RICE: Thank you, sir.

14:13:43 15 MR. BENNETT: Special Master Cohen, would you
16 like me to remain in case additional questions come up or do
17 you want me to leave?

18 SPECIAL MASTER COHEN: Sounds like you have
19 other work to do, and I don't think I have any other
14:13:50 20 questions for you. And appears no one else does. So thank
21 you for coming in on a -- on your single day of employment
22 this week.

23 (Laughter.)

24 MR. BENNETT: Thank you very much.

14:13:59 25 SPECIAL MASTER COHEN: Is that a three-week

1 old beard?

2 MR. BENNETT: It's a little longer than that,
3 but yeah, it's -- it's growing. I was hoping it would keep
4 me incognito. Apparently, it didn't work.

14:14:11 5 SPECIAL MASTER COHEN: No. Sorry.

6 (Laughter.)

7 SPECIAL MASTER COHEN: All right.

8 So let's return to the question of when these
9 depositions are going to take place that implicate Touhy
10 concerns.

11 It's my preference that a deponent be deposed once.
12 That's why I suggested that we move a deposition toward the
13 end of January so that the Touhy process can go forward and
14 a deponent doesn't have to be recalled. It sounds like, and
14:14:45 15 I didn't completely follow what you were saying, Pete.
16 Partly because I was being interrupted with this phone call
17 and I didn't hear everything you said. That you believe
18 there's good reason to go forward with some depositions
19 immediately, even though they have Touhy issues, and then
14:15:01 20 come back and mop up Touhy issues later if necessary.

21 Is that what you were saying?

22 MR. WEINBERGER: Yes, that was until I just
23 heard Mr. Bennett's dissertation.

24 SPECIAL MASTER COHEN: Okay.

14:15:12 25 MR. WEINBERGER: And I really think we need to

1 -- it's actually my partner, Bill Howse, who's taking the
2 deposition.

3 SPECIAL MASTER COHEN: I didn't hear you.

4 MR. WEINBERGER: My partner, Bill Howse, is
14:15:23 5 taking that deposition. And I think we need to confer with
6 him. Paul Farrell and I need to confer with him to
7 determine whether or not we want to proceed next week.

8 SPECIAL MASTER COHEN: All right.

9 I hear that as meaning there's nothing for me to do
14:15:38 10 right now.

11 MR. FARRELL: This is Paul Farrell. I think
12 what it comes to is -- let's just play it out. "Mr. Boggs,
13 were you present for the 2007 meeting with Mr. McKesson?
14 Objection. That was part of his role with the DEA." He's
14:15:57 15 instructed not to answer. So then we come back, the
16 furlough's lifted.

17 SPECIAL MASTER COHEN: Is that McKesson's
18 objection to make?

19 MR. WEINBERGER: Let's assume he, the witness,
14:16:09 20 decides.

21 SPECIAL MASTER COHEN: If he, the witness,
22 decides, then you're going to have to deal with it.

23 MR. FARRELL: So the way we would deal with it
24 is we would come back to you, and if you rule that it is
14:16:16 25 permissible to ask him that question, we would be --

1 SPECIAL MASTER COHEN: I'll tell you right now
2 the way I'm going to deal with it is allow him to be
3 redeposed when the Touhy issue is resolved. That's all I
4 can do. I'm not going to rule on that.

14:16:28 5 MR. WEINBERGER: Okay. So --

6 SPECIAL MASTER COHEN: I can tell you that I
7 think it seems to me it's not McKesson's objection to make.
8 It's his decision to make, and then instruction not to
9 answer is rarely appropriate, and that ain't one of them.

14:16:40 10 MR. WEINBERGER: Understood.

11 So we'll keep the deposition on, but we will confer,
12 you know, meet with my partner and get back to McKesson's
13 counsel if there's any change.

14 SPECIAL MASTER COHEN: Okay.

14:16:52 15 MR. WEINBERGER: Thanks.

16 MR. LYNCH: Special Master, I'd just like to
17 point out that the end of January -- is this on?

18 SPECIAL MASTER COHEN: This is Mark Lynch.

19 MR. LYNCH: The end of January is getting
14:17:04 20 very, very jammed up. And it seems to be the answer for
21 every problem is, "Well, we'll do it at the end of January."
22 And the capacity of the end of January to handle all these
23 issues is, I think, perhaps past the breaking point.

24 And I think that -- they ought to go forward. They
14:17:26 25 ought to ask the questions. The test according to Mr.

1 Bennett is whether it's official information and nonpublic
2 information, and get the testimony, get it out of the way,
3 and then if they can come back with anything that they
4 really need that was official and nonpublic, that's
14:17:46 5 relevant, then you can decide that.

6 SPECIAL MASTER COHEN: I mean that seems like
7 a reasonable approach, but I'm not going to order it. I
8 want you all to try to work this out. And as I said, this
9 might be the kind of thing where I just say the deposition
14:18:05 10 either on the Touhy increment or the entirety will go
11 forward because of extenuating circumstances after January
12 25th, and that's not an impossibility. All right.

13 Just so that I can keep track, that's an Agenda Item
14 we already addressed earlier, correct, that you came back
14:18:35 15 to?

16 MR. WEINBERGER: Yes, we were going to ask you
17 to deal with those. Number 69.

18 SPECIAL MASTER COHEN: Okay. We will jump to
19 Agenda Item 69, which is the top of Page 4. And this is,
14:18:55 20 Mr. Weinberger, what you referred to earlier as the other
21 matter that was referenced in the status report to Judge
22 Polster?

23 MR. WEINBERGER: Yes.

24 SPECIAL MASTER COHEN: So let me begin with a
14:19:11 25 question for the Defendants.

1 Is the last -- I believe it's the last sentence in the
2 note section of this Agenda Item. I'll read it. The
3 Plaintiffs say, "We ask that this be placed on the agenda
4 for Wednesday's discovery conference, and that each
14:19:34 5 Defendant be required to certify that they have produced,
6 one, complete details regarding their SOM programs, and the
7 suspicious orders they identified, investigated, and
8 reported; and two, all records relating to charge back
9 requests submitted to or paid by Defendants."

14:19:52 10 Why shouldn't I do that? I can't think of a good
11 reason not to do that.

12 MR. PYSER: Special Master Cohen, just to
13 clarify, that was at the request of the manufacturers.
14 Correct?

14:20:10 15 SPECIAL MASTER COHEN: I hadn't noticed that,
16 but that is correct.

17 MR. PYSER: Thank you. That was Steven Pyser
18 for Cardinal Health.

19 MR. REED: Special Master Cohen, Steve Reed
14:20:13 20 for Teva.

21 Again, I'll point out that this does not apply to
22 Teva. I think Plaintiffs would agree.

23 (Laughter.)

24 MR. REED: So while all the distributors are
14:20:31 25 carving themselves out, I would like to point out the last

1 sentence of the matter of description, which notes Teva's
2 compliance.

3 MS. WELCH: Special Master Cohen, Donna Welch
4 for Allergan.

14:20:45 5 As indicated in my January 7th letter to Plaintiffs,
6 Allergan has produced all of the relevant documents, all of
7 the relevant responsive documents.

8 But I'll -- I'll note that what we're being asked to
9 certify in Item 1, I'm not certain exactly what that means,
14:21:05 10 "produce complete details regarding their SOM programs and
11 the suspicious orders they identified," if that's just
12 simply asking for certification that --the responsive
13 documents that we have, have been produced, I guess we don't
14 have an issue with it, to the extent, you know, parties on
14:21:29 15 both sides are being asked to certify that responsive
16 documents have been produced.

17 If they're seeking something in addition to simply
18 production, we've not had a discussion about it, and I don't
19 know what that would be. I know distributors, for example,
14:21:44 20 were asked to respond in writing on certain issues. We have
21 not been asked to or ordered to or required to do that, but
22 for my client, I can say that the responsive documents have
23 all been produced.

24 MS. SINGER: Special Master Cohen, just to
14:22:00 25 respond to that, you ordered, I think, on December 5th at a

1 hearing that at this stage, given the voluminous discovery
2 and where we are in discovery, that the Defendants produce
3 and identify those documents.

4 Ms. Welch is right that we haven't asked for any form
14:22:14 5 to be filled out. But, this request reflects Judge
6 Polster's order that documents reflecting complete details
7 on Suspicious Order Monitoring Programs not be withheld on
8 claims of privilege and two discovery requests that
9 Plaintiffs served, Purdue Request 17, Purdue Request Number
14:22:34 10 31, which lay out the documents that have been requested,
11 all records of charge back requests demurred in the note on
12 the agenda. So I don't think I need to restate them here.

13 But I can tell you that based on the reports back from
14 the various Plaintiff teams who have been interacting with
14:22:54 15 Defendants, with the exception of Teva -- Mr. Reed gives me
16 residuals on this -- that there are gaps, we believe, for
17 all Defendants. They are different for each of the
18 manufactured Defendants.

19 So for Allergan, there was deposition testimony
14:23:13 20 recently that the person who ran Allergan's Suspicious
21 Ordering Monitor Program testified she made a record each
22 time an order triggered their Suspicious Order Monitoring
23 system.

24 We haven't found these records. Perhaps Allergan
14:23:28 25 produced them. But again, consistent with your order, those

1 records should be identified, and if they haven't been
2 produced, they should be produced. And each Defendant
3 should be able to certify that those kinds of details at
4 this point have been produced. We are weeks away from
14:23:42 5 expert deadlines.

6 SPECIAL MASTER COHEN: Produced or logged.

7 MS. SINGER: Yes, produced or logged, so that
8 we can challenge the privilege. Yes, correct.

9 But, this is information that we must have for expert
14:23:54 10 reports.

11 COUNSEL: Special Master Cohen --

12 SPECIAL MASTER COHEN: What about the
13 suggestion that that obligation should apply equally to
14 Plaintiffs, certification obligation?

14:24:09 15 MS. SINGER: So I'm -- you know, we're talking
16 about productions that were ordered by you and by this Court
17 that we have struggled to get from Defendants.

18 SPECIAL MASTER COHEN: I guarantee you that if
19 I ask a Defendant to make a suggestion as to whether they've
14:24:25 20 struggled about getting some information from you, they
21 could give me a list.

22 MS. SINGER: If there's a request or a
23 particular instance for critical information that we
24 certify, I'm certainly happy to entertain that request from
14:24:36 25 Defendants. You know, they should represent that the

1 production is complete. They have said that it is. We
2 don't believe it is based on our review of the records. So
3 there's only one way to put that to rest. And we believe
4 pursue -- as you have said before, there's been lots of
14:24:51 5 parsing of the responses here that indicates to us that all
6 of the documents haven't actually been produced.

7 MS. LUCAS: Speaking for Janssen, this is Amy
8 Lucas.

9 I'm confused as to -- at least as to us why this is
14:25:07 10 even on the agenda and raised in some way applicable to all
11 Defendants. We have ongoing meet-and-confer efforts with
12 our handlers, and I just -- I don't understand why something
13 is being discussed in a motion-to-compel setting when we
14 have been working our tails off to meet and confer with them
14:25:26 15 to give them everything they need.

16 COUNSEL: Special Master Cohen --

17 WOMAN COUNSEL: We as well have been working
18 with our assigned handler, and there was talk this morning
19 about the Plaintiffs' side and how they have representatives
14:25:44 20 attached and assigned to particular Defendants. And our
21 handler for Endo and Carr is Jill Scalia, who has been in
22 ongoing conversations with Ms. Scalia and has produced, to
23 my knowledge, everything that's responsive with respect to
24 the SOMS-related documents, including SOMS documents
14:26:06 25 discussed earlier today, with one small exception, which

1 we're producing this week. And we've been in ongoing
2 discussions with our handler as well.

3 SPECIAL MASTER COHEN: If that's true, what's
4 the worry about certifying? You just made the statement in
14:26:20 5 court as an officer of the court on the record. Why are you
6 hesitant to certify it?

7 WOMAN COUNSEL: I'm not hesitant to certify we
8 have completed our production. We produced documents
9 responsive to the requests. I just don't understand the
14:26:35 10 language of the certification. It is extremely broad and
11 we've never been approached about this language outside of
12 this particular mechanism. And it's removed from our
13 ongoing discovery discussions with our handler.

14 MS. SINGER: So just to make sure the record
14:26:49 15 is clear, my understanding is that Endo has not produced the
16 Suspicious Order Monitoring program for its generic
17 subsidiary, Carr? That is an issue that has been raised
18 with Endo. Last production update indicated that, you know,
19 it will be produced TBD. And at this point, as Defendants
14:27:09 20 have made clear in all of prior discussions, TBD is not an
21 acceptable response.

22 MS. LUCAS: I think this is an issue that goes
23 both ways. There's an Agenda Item for Cleveland's
24 productions that are woefully deficient and in our view
14:27:27 25 neglected. So I just -- I don't think it's --

1 SPECIAL MASTER COHEN: What are you talking
2 about, Juvi Court?

3 MS. LUCAS: No. It's not on the agenda
4 because Mr. Pifko updated you Monday, and we submitted a
14:27:39 5 response which we can talk about when we get to the agenda,
6 but I think everybody, I would hope that everybody's working
7 in good faith to get everybody what they need, but I just
8 don't think it's fair for the Plaintiffs to be waving their
9 arms up and down, jumping up and down, when this is an issue
14:27:56 10 that absolutely goes both ways.

11 MS. ACKERMAN: Let me just jump in. This is
12 David Ackerman.

13 Since there was a reference to one of Janssen's
14 handlers, as Ms. Lucas knows, I am one of Janssen's
14:28:06 15 handlers, and what I can address is that Janssen advised us
16 that they had identified SOMS documents. And then when we
17 went back and were preparing for a deposition this week,
18 we identified a number of SOMS documents that were not --
19 that had not been produced, and Janssen produced those on, I
14:28:24 20 believe, over the weekend, and then identified that there
21 were additional documents forthcoming.

22 That's the reason for the certification. We need to
23 know when these productions of key documents are complete.

24 MR. LAFATA: Special Master Cohen, this is
14:28:38 25 Paul Lafata for Purdue.

1 I think what Mr. Ackerman said actually is maybe a
2 good idea for what may be helpful here. It sounds like the
3 Plaintiffs for some Defendants have an idea of what they
4 expect to see that they're not seeing.

14:28:49 5 I think, rather than have a secret list, why don't the
6 Plaintiffs just tell what they expect to be seen in these
7 document categories that they're not seeing?

8 For Purdue, for example, I -- in early December, I
9 submitted these correspondences to the Court and then
14:29:04 10 listing things we've been producing on this, and I've not
11 heard, "But we're missing A. We're missing B."

12 So that's the normal course. If we say we believe
13 we've done what we have, and the other -- and the Responding
14 Party Plaintiff or Defendant believes there's something
14:29:17 15 missing, you just say, "Raise your hand, I think there's
16 something missing," and then we address that, rather than a
17 blanket certification when there's already a list of
18 questions about whether there's something missing.

19 MS. LUCAS: And I will say to Mr. Ackerman's
14:29:29 20 credit, that is what they have done with us. Albeit,
21 regardless of the timing and when they sent it to us, that
22 is what they did. They gave us a long list, and we
23 immediately started investigating and have been working with
24 them, and we would welcome continuing to work with them and
14:29:45 25 it's been productive.

1 MR. O'CONNOR: Special Master Cohen, this
2 Andrew O'Connor for Mallinckrodt. I would echo Mr. Lafata's
3 comments.

4 We submitted to Endo, Ms. Singer, a list of what we
14:29:57 5 produced and addressed her questions on November 30th. She
6 thanked us and said I'll be back in touch with any
7 questions. The next we heard from her was this blanket
8 e-mail to everyone. And we would respectfully suggest we
9 continue to do what we've done productively in the vast
14:30:14 10 majority of cases and just engage in a meet and confer with
11 our handlers who know what we've produced, what we haven't
12 produced. And we can get to a good place on this. This
13 blanket request out of left field, I don't think, is
14 productive.

14:30:29 15 SPECIAL MASTER COHEN: I'm not going to -- I'm
16 not going to order a certification at this time. I think
17 that it is appropriate at the end of discovery, whatever
18 that means, which may not be on January 25th, that some sort
19 of certification by both sides be offered. I'm not sure
14:30:48 20 what it's going to look like. I'll take suggestions. The
21 key is for everybody to be confident they've gotten what
22 they asked for on both sides.

23 I know that the Plaintiffs are sometimes complaining
24 that we can't give you a list because we don't know what
14:31:05 25 we're asking for. You should know what we've asked for,

1 given the broad categories that we've included in our
2 discovery requests. I've tried to address that as best I
3 can.

4 Plaintiffs, you are going to have to come up with
14:31:20 5 lists as specifically as you can of what it is you think you
6 haven't received that you think you should or that needs to
7 be put on a privilege log. And I know a lot of what you
8 think you should receive, you haven't received because it's
9 on a privilege log, but it's got to be on one or the other.

14:31:36 10 MS. SINGER: So as you acknowledge, Special
11 Master Cohen, we don't know what we don't know. And the
12 dynamic that happens is what Mr. Ackerman described or what
13 Ms. Conroy was talking about is that we go to a deposition
14 and a witness responds to say that would have been in this
14:31:50 15 record or that database. And when the deposition has
16 happened, right, it is incredibly inefficient to find out
17 about documents the Defendants should have known about in
18 the summer when they were responding to discovery or
19 certainly when they were preparing a witness for deposition.
14:32:06 20 And to put the burden on us where we know we are happy to
21 identify to Defendants what we think is missing, but we
22 can't know what isn't there, and it is their obligation.

23 Frankly, from my perspective -- and other Plaintiffs
24 may disagree -- and they will if they do, the certification
14:32:24 25 is less important than getting the documents, and again, we

1 have a deposition tomorrow of a compliance official. We
2 have expert report deadlines coming. We can't get this
3 information in February or on January 25th.

4 SPECIAL MASTER COHEN: You know --

14:32:44 5 MR. WEINBERGER: One other thing.

6 This particular -- we're not talking about the breadth
7 of all the discovery documents that we've been requesting.

8 This particular set of documents, the Suspicious Order
9 Monitoring documents and charge back data, which has
14:33:03 10 significant relevance to the data, is something that the
11 Court, on November 21st, that you I think later on clarified
12 was applicable to the manufacturers.

13 SPECIAL MASTER COHEN: Agreed.

14 MR. WEINBERGER: And so with respect to this
14:33:24 15 category of documents, which is critical to the case, I
16 don't think it's unreasonable for the Plaintiffs, under
17 these circumstances, to be asking the Defendants, "Certify
18 that you've given us everything."

19 MR. REED: Special Master Cohen, Steve Reed
14:33:44 20 for Teva.

21 Again, Teva is not in this particular issue, but I do
22 have a concern about the certification going down what I
23 view as a bit of a slippery slope with this certification.

24 Plaintiffs have categories that they think are
14:33:57 25 particularly important. Certainly, the Defendants feel the

1 same way. I think it becomes a distraction and then could
2 become an unproductive game of Gotcha if we we're talking
3 about and battling over certifications as opposed to
4 operating in good faith back and forth to make sure that
14:34:16 5 things aren't missed. Things will always be missed.

6 If people discharge their obligations under the rules
7 and the code, they will search -- make reasonable efforts to
8 search the right places to produce responsive documents. If
9 it turns out things were missed, then I think it's on both
14:34:35 10 parties to engage in order to make sure those are collected
11 in a timely way.

12 If we then just start to trade certifications and
13 start filing motions about whether a certification was
14 accurate or not, it's going to become a side show that will
14:34:49 15 become an unnecessary distraction in this case.

16 SPECIAL MASTER COHEN: I'm not going to do the
17 certification now, and I've been very clear this morning,
18 you know, what could happen, what may happen if documents
19 that clearly should have been produced, that were clearly
14:35:06 20 critical, weren't, and are produced in Track Two, where did
21 this come from, why wasn't this produced before.

22 Plaintiff should make as clear as they can to
23 Defendants what it is they believe they have not received,
24 and the categories of documents that they want to make damn
14:35:22 25 sure they have right now on the lines of what you just said,

1 Pete, and try and avoid this issue. That's all I'm in a
2 position to do at this time.

3 It's 2:35 and we have a hard stop at 3:00. I just
4 want to note that. All right.

14:35:44 5 We're moving on to -- or back to Agenda Item 139.

6 MR. REED: Sorry. What number was that?

7 SPECIAL MASTER COHEN: 139.

8 And my notes to myself is that I think that Purdue
9 thought this wasn't quite ripe, and I suggested the parties
10 should be able to resolve it on their own and I sent the
11 parties back to talk about that.

12 MR. ACKERMAN: This is David Ackerman. I've
13 spoken with Mr. Lafata this morning. I think we'll talk in
14 the morning about this. The only thing I would ask is that
14:36:23 15 we be able to raise this with you if for some reason we
16 can't reach agreement on an expedited basis because we have
17 a 30(b)(6) witness scheduled, I believe, for Tuesday.

18 So I just wanted to alert you to the fact that if for
19 some reason Paul and I can't work it out, we might be asking
14:36:44 20 you for a quick decision.

21 MR. LAFATA: Special Master Cohen, Mr.
22 Ackerman is right that we are, pursuant to your request, I
23 think late last night, we're going to be conferring about
24 this. We really think there ought to be a way for attorneys
14:36:57 25 to work this out. It's a matter of just time.

1 SPECIAL MASTER COHEN: I agree.

2 MR. ACKERMAN: Deposition time.

3 SPECIAL MASTER COHEN: All right.

4 So that's fine. Do your best. Come back to me if you
14:37:04 5 need to. Remind me that this is something, if you do come
6 back to me, that I agreed to address quickly. Okay.

7 MR. ACKERMAN: Thank you.

8 SPECIAL MASTER COHEN: Item 140 is another
9 issue that I just think there's some middle ground that the
14:37:32 10 parties should be able to meet there. We can talk about it
11 briefly now if you want, and I can help you come to that
12 middle ground or you can agree to try to do that without me.
13 It really did seem like there's, you know, both sides were
14 making reasonable points.

14:37:49 15 MS. WELCH: Donna Welch for the Defendants.

16 We are really seeking clarification from you, Special
17 Master Cohen, that Discovery Ruling 7 doesn't prohibit us
18 from talking to prescribers.

19 I am not aware that Plaintiffs have taken a contrary
14:38:10 20 position on your order.

21 SPECIAL MASTER COHEN: No, but they wanted to
22 be careful about it and, you know, I could clarify it but
23 what I would rather do is, if you can come to an agreement
24 on exactly what that means -- you know what their concerns
14:38:22 25 are, they're valid, and at the same time you have concerns

1 about wanting to be able to get some information.

2 So if you can come to an agreement about what my
3 ruling meant and what that allows you to do, that's fine.

4 MS. WELCH: We would like to do that. I'll
14:38:39 5 raise two issues. The first is what we need to do and would
6 like to do now, which is to talk to prescribers without
7 identifying specific prescriptions, without identifying or
8 talking about specific patients, but to talk to prescribers
9 in the Track One jurisdiction about opioids.

14:39:00 10 That's what we're looking to do right now. We don't
11 believe that is in contravention of your order, but out of
12 an abundance of caution, we wanted to make sure that
13 Plaintiffs do not believe that would violate the order and
14 that you don't believe that would violate your order.

14:39:17 15 We firmly believe there will be a time where we will
16 need to talk to some prescribers about certain prescriptions
17 or about certain individuals. We're not there yet, and we
18 are not there yet in part because we don't have what we
19 believe are full answers to the interrogatories and complete
14:39:42 20 production of claims data. But, we absolutely represent to
21 the Court that it -- the Defendants do not intend now to do
22 that. We will come back to you and to the Plaintiffs to
23 discuss a protocol by which we could engage in discussions
24 with, and potentially discovery of, prescribers, and to do
14:40:06 25 that pursuant to a protocol so that it's deidentified.

1 Again, our issue has never been to try to get names
2 out in the record. So that -- that is a next step, but
3 right now, we believe we're entitled to talk to prescribers
4 generally. Many of these prescribers, most of these
14:40:29 5 prescribers, we didn't learn about even because of the
6 claims data, but again, because of the order wording of your
7 order, out of an abundance of caution, we cross-referenced
8 them. And many of the prescribers that we believe we have a
9 need to talk to are referenced in the claims data. Again,
14:40:45 10 we don't intend to discuss the claims data with them. Any
11 specific prescriptions, any specific individuals, we won't
12 reference the names of patients, but we believe that that
13 should be allowed right now.

14 MR. ACKERMAN: Special Master Cohen, this is
14:41:00 15 David Ackerman.

16 And as you can see, many of the Bellwether Plaintiffs
17 representatives have gotten up to whisper in my ear because
18 this is an extremely sensitive issue for the Bellwether
19 Plaintiffs. I understand she says they don't want to go to
14:41:14 20 prescribers and ask about specific individuals or
21 prescriptions, but the problem we have is that if you go to
22 a prescriber and say, "So if you had a patient who was about
23 40 years old and who came to you with a knee injury, and you
24 prescribed an 80 milligram oxy, why would you have done
14:41:33 25 that?" And that may refresh something in a prescriber's

1 mind. That's exactly why I put what I did in my letter,
2 which is we need to understand really more specifics from
3 the Defendants about what it is they want to ask prescribers
4 about.

14:41:45 5 If this is a question to a prescriber just to say,
6 "Did you get -- were you visited by a sales representative
7 and what did the sales representative tell you," well, that
8 doesn't implicate claims data and that might not be an
9 issue. But, if this is questions about a particular
14:42:00 10 prescriber's prescribing habits and they have that
11 information because it was produced in the claims data, that
12 is an absolute issue for the Bellwether Plaintiffs and
13 something we think is prohibited by Discovery Ruling 7. And
14 the Plaintiffs produced this information in full reliance on
14:42:21 15 those protections that were key to the -- that effort.

16 SPECIAL MASTER COHEN: Donna, is there a way
17 to do what you want to do by talking to prescribers who are
18 not in the claims data?

19 MS. WELCH: I think, unfortunately, given the
14:42:40 20 volume of claims data and the prescribers that we believe we
21 need to talk to, it would limit us significantly.

22 So, no, we don't -- we don't think that's -- we don't
23 think that's sufficient and, again, recognize that we
24 believe we will be back in front of you at some time soon
14:42:59 25 saying that we need to talk to certain of those prescribers

1 now about specific prescriptions and specific individuals.

2 We're representing we want do that; yet, we're
3 representing we won't do that until we've got an order in
4 place that allows us to do that under a protocol that
14:43:16 5 protects privilege or privacy or, you know, keeps things
6 confidential. But to say that we can't talk to the
7 prescribers, you know, in the -- in the claims data, the
8 claims data that they're relying on is too limiting for
9 Defendants.

14:43:34 10 This -- they talk about the SOMS data as being what
11 goes to the heart of their case. This is the information
12 that goes to the heart of our defenses.

13 MR. ACKERMAN: Let's just be clear about a
14 couple things -- sorry. I didn't realize you weren't done.

14:43:51 15 MS. WELCH: And there's nothing to say. I
16 mean we could be ordered that if a doctor starts to discuss,
17 wants to go to individual patient level information right
18 now, we can be instructed as officers of the court that
19 we're to tell that doctor we can't talk about that right
14:44:06 20 now. And we're happy to do that, too.

21 But, again, to say that we can't talk to prescribers
22 and we can't ask about their prescribing habits, of course,
23 we need to ask about their prescribing habits. But, again
24 we're officers of the Court. We understand that until we
14:44:25 25 have an order allowing us to do it, we're not -- we're not

1 going to monkey around to, you know, quote things from
2 earlier, asking about things that come out of the claims
3 data and using the claims data.

4 MR. ACKERMAN: To clarify a couple points.

14:44:45 5 The Plaintiffs are not relying on the claims data.
6 Plaintiffs have produced the claims data a because we were
7 ordered to on July 3rd and thereafter. It was the
8 Defendants at all times who wanted the claims data and all
9 times aware that you had placed these restrictions on
14:45:03 10 discovery of individuals and prescribers identified in the
11 claims data. And what we are saying now is if they want to
12 talk to prescribers about issues outside of the claims data,
13 then that probably is permissible under Discovery Ruling 7
14 and we can discuss it with them. But, if they want to talk
14:45:22 15 to the prescribers about information they learned by virtue
16 of the claims data, that it, by its very nature, is using
17 the to claims data to conduct third-party discovery. It is
18 exactly what you prohibited in Discovery Ruling Number 7.

19 MS. WELCH: We are not seeking at this time to
14:45:39 20 ask the prescribers about information contained in the
21 claims data. That's not what we're talking about. But to
22 say we can't ask generally about prescribing habits because
23 it might --

24 SPECIAL MASTER COHEN: That's enough. You've
14:45:52 25 asked for clarification, I will try and give it to you.

1 Thank you.

2 MR. SHKOLNIK: Special Master Cohen, if we
3 could just place on the record -- Hunter Shkolnik on behalf
4 of Cuyahoga.

14:46:03 5 Cuyahoga's position is we saw this as a slippery slope
6 when we were arguing this very issue back in July. We were
7 given assurances that they were not going to be drilling
8 down on employees on doctors, and ever getting to this
9 level.

14:46:18 10 Now we're hearing, "Well, let's just do the next
11 step," which is we'll generically talk to doctors who just
12 happen to be in the claims database, which we were ordered
13 to produce under the guise they were never going to go drill
14 down that far. And after they get through the generics
14:46:35 15 speaking to doctors that happen to be there, "Well, we're
16 going to ask for a new protocol so we can speak
17 specifically."

18 This is the reason why we took the position. We were
19 never relying on this -- on these claims, making these
14:46:49 20 claims seeking recovery. And we oppose this, and it is
21 clear that our worse fear that we had been suggesting in the
22 beginning is coming to fruition. This is the next step
23 before they ask for their specific protocol to speak to
24 doctors about our employees, and our employees families,
14:47:07 25 which is something that was precluded and we would ask that

1 it be stopped and stopped now, so that we never get to the
2 next step. Thank you.

3 MS. WELCH: May I make one more point Special
4 Master Cohen.

14:47:18 5 SPECIAL MASTER COHEN: In one minute or less.

6 MS. WELCH: What has changed since then is
7 that Plaintiffs have now taken the rather extraordinary
8 position that every prescription for opioids, every single
9 one written in the Track One jurisdictions is improper.
14:47:35 10 They've made prescriptions for chronic pain, one of the
11 seminal issues in their case. To say that we can't talk to
12 prescribers when they're saying that every prescription was
13 tainted guts our ability to defend in these cases. It's and
14 fundamental issue to the defense.

14:47:58 15 SPECIAL MASTER COHEN: Okay. Thank you. I
16 understand the issue.

17 MR. REED: Special Master Cohen, Steve Reed
18 for Teva.

19 I know you've given a lot of time and you want to move
14:48:10 20 off this subject. I would just put a plea in. That we
21 could have your clarification promptly because time is
22 important, and I just want to respond to one thing that we
23 heard which was there was some kind of guise.

24 I want to be very clear our view is we've been accused
14:48:26 25 of defrauding doctors and our view is and has always been in

1 order to defend ourselves against these very ambitious
2 claims, we have to have the facts underlying the Plaintiff's
3 claims and we have to be able to take discovery in order to
4 re respond to those claims.

14:48:45 5 Even if the Plaintiffs decide they want to pursue an
6 aggregate model which we think is legally insufficient. One
7 of the ways to respond to that kind of model is to speak to
8 the doctors under the model supposedly were misled to find
9 out if they were misled and by who, and what that caused
14:49:05 10 them to do.

11 And this is just from our perspective. We've heard
12 from the Plaintiffs what they think are the critical pieces
13 of discovery for them -- Tim I'm telling you from my
14 perspective this is critical for the manufacturer he is
14:49:18 15 defense and we feel a bit frustrated in our efforts to get
16 it.

17 MR. PIFKO: Special Master Cohen, I want to
18 note that also the HIPAA order -- Mark Pifko from Baron and
19 Budd for Plaintiffs -- the HIPAA order, which I don't have
14:49:30 20 the docket entry but I know I memorized it because we've
21 talked about it so much, it was entered on July 3rd, was
22 also, limits the use of this. And we've had this issue in
23 other contexts where you say the parties agree to this and
24 you know you're tuck with it. So that was the -- that was
14:49:45 25 an order that was entered I believe by mutual agreement of

1 the parties and that was the limitation on the use of the
2 claims data was a provision that's in the order. So he if
3 that's what was agreed to, that's what was agreed to.
4 There's no reason for us to revisit that.

14:49:59 5 MR. REED: Special Master Cohen, Steve Reed
6 for Teva.

7 We've masked the information. We're actually asking
8 questions from treating physicians so I'm not sure I
9 understand at all the concern about protecting health care
14:50:10 10 information when these are the treating physicians who
11 presumably have that information. We're certainly not
12 looking to provide those doctors with information that they
13 don't already have and are not entitled to. But, to me this
14 is just a construct.

14:50:24 15 SPECIAL MASTER COHEN: Agenda Item 141 is the
16 next one on the list. And that one is Plaintiff's request
17 for additional deposition time from Chris Zimmerman and
18 Stephen Mays.

19 I've read the parties' submissions on this. Frankly,
14:50:37 20 I think the Defendants make a very strong point, that they
21 did nothing wrong, and that they acted appropriately, given
22 the rules that were in place when these very early
23 depositions occurred.

24 And the rules that were in place at that time were
14:50:51 25 different than they are now. Having said that, I also think

1 that it's appropriate -- it's I think that the best result
2 for this case, despite the fact that I don't think
3 Defendants did anything wrong, is nonetheless to reopen
4 these depositions to allow Plaintiffs to ask some additional
14:51:23 5 questions because the parties are so important, because the
6 rules did change after this occurred, and I'm going to --
7 allow a very limited amount of questioning. Specifically,
8 I'm going to allow one and a half hours each for
9 Mr. Zimmerman and Mr. Mays. I did get Defense counsel's
14:51:42 10 e-mail this morning explaining why they thought Mays and
11 Zimmerman were different. But, nonetheless I'm going to
12 allow that, and they're both in their roles as fact
13 witnesses, not 30(b)(6) witnesses.

14 Any questions about that ruling?

14:51:59 15 MR. PIFKO: We accept that ruling.

16 I want to clarify at no point was I trying to impute
17 they deposit anything wrong. We thought under the fact we
18 were entitle to more testimony so I didn't want you to think
19 we were arcing they were acting in bad faith.

14:52:12 20 SPECIAL MASTER COHEN: Okay. Thank you.

21 MR. PIFKO: And to the extent we have a time
22 limitation I did have the Rite-Aid issue that I raised.
23 It's at the bottom of the agenda because it's a new item but
24 a significant issue I wanted to make sure we would have the
14:52:26 25 opportunity to discuss.

1 SPECIAL MASTER COHEN: All right. What page
2 is that, what item number?

3 MR. PIFKO: I'll have to look at it.

4 SPECIAL MASTER COHEN: 29.

14:52:51 5 MR. PIFKO: Yeah, 29.

6 MR. MALLOY: Special Master Cohen, this is
7 John Malloy on behalf of Rite-Aid. I had filled in for
8 Alisa McElroy, who had to jump earlier this afternoon.

9 I believe this was an issue that Ms. Moore had raised
14:53:12 10 with you by e-mail, and it's our position on Rite-Aid.

11 SPECIAL MASTER COHEN: Yeah, this is too
12 important an issue for me not to have a response in writing
13 from Rite-Aid. I know what the issue is. I know that among
14 other things Rite-Aid believes this has already been
14:53:30 15 decided, and I know that you believe that you've come to
16 additional information making this dispensing information,
17 you think, relevant and produceable because it -- it ties
18 back into the Suspicious Order Monitoring. So I get the
19 issue. It's a big issue, and I think that they need a
14:53:50 20 chance to respond in writing.

21 MR. PIFKO: Okay. Fair enough, but you know,
22 everybody, including me when I've been acting on behalf of
23 Cleveland, has been forced to respond in very limited time
24 frames.

14:54:00 25 They asked, I believe it was Monday, even Amerisource

1 asked for more time, and they responded last night. I don't
2 understand what's taking them so long to respond. We need
3 to get that resolved.

4 SPECIAL MASTER COHEN: I agree.

14:54:12 5 Rite-Aid, when can you -- I will tell you when you're
6 going to, but for someone to ask you when you think you can.

7 MR. MALLOY: I would ask that Ms. Moore, who's
8 in a deposition right now, and I have called her to join the
9 call so that she can respond.

14:54:29 10 I think some of the delay is because of the -- (phone
11 connection paused.) -- on this issue on January 7th, and we
12 had not heard anything before that, even though the
13 depositions were on December 18th, December 20th, but we
14 propose that we respond on Monday.

14:54:49 15 SPECIAL MASTER COHEN: That's fine.

16 MR. MALLOY: Thank you, Special Master.

17 MR. PIFKO: I just wanted to clarify a
18 position.

19 I understand you're not going to rule, but they
14:54:58 20 testified that the dispensing data was the first line of
21 defense. So if that's the case, I need to -- if they're
22 going to say every prescription that was ordered was valid,
23 I don't believe that's going to be true. I need the
24 opportunity to prove that that's, in fact, not true if
14:55:12 25 that's going to be their position.

1 SPECIAL MASTER COHEN: Agenda -- we're now
2 moving into what are categorized as previous agenda items.
3 These are agenda items where they're put in this bucket
4 because the parties were working together and making
14:55:29 5 progress.

6 The first one is Number 51, and Mr. Pifko was working
7 on some statistics and other issues with a January 7th
8 deadline of figuring that out.

9 Can I get a report on that?

14:55:46 10 MS. LUCAS: Special Master, I have printed you
11 courtesy copies of the submissions because they came in
12 after the agenda was submitted. Would you like me to submit
13 it to you?

14 SPECIAL MASTER COHEN: Sure.

14:55:58 15 MR. PIFKO: I can explain to you -- I can give
16 you the gist of it.

17 So obviously, the request, this all started with an
18 investigation asking that there was potential deficiencies
19 in the way the documents were collected.

14:56:15 20 It's -- I just -- I can't snap my fingers and make
21 people do things. I'm not the one, obviously, who's -- I'm
22 not the IT person who's going to go and collect the data.
23 Believe me, we've been bugging everybody in the City and all
24 the vendors as regularly as we can to get them to get us the
14:56:31 25 information. I have confirmed that several custodians do

1 not have issues, and I've confirmed some of the custodians
2 do have issues.

3 Ms. Lucas wrote back and said she was upset that we
4 haven't told them what -- why there are issues. I've
14:56:46 5 learned from our IT staff that we may never be able to
6 figure that out. And honestly, I don't know why we need
7 to know. What does that tell us?

8 The bottom line is if there's a deficiency, I'm going
9 to correct it and I'm going to produce the additional
14:56:59 10 documents. So I don't know why we're fighting about the
11 technical details about what sort of glitch may have
12 happened. I can tell you it wasn't intentional.

13 And I also want to make clear I had some conversations
14 with Ms. Wu. I know this isn't her issue, but we were
14:57:13 15 talking outside in the hall. And if people need to be made
16 available for deposition, again because of additional
17 documents, I'm not going to object to that. I think that's
18 fair.

19 So I wanted the Court to understand our view there.

14:57:25 20 SPECIAL MASTER COHEN: All right.

21 So I -- as a general matter, I agree with you that I
22 don't really care so much as to what went wrong. I'm more
23 concerned with getting it fixed.

24 The first paragraph of Ms. Lucas' January 7th e-mail
14:57:43 25 lists nine folks who you don't address.

1 MS. LUCAS: And to correct that, it's actually
2 eight. There was one person on there who was listed twice.

3 SPECIAL MASTER COHEN: All right. So how do
4 we get that finished?

14:57:55 5 MR. PIFKO: I'm working -- literally sending
6 e-mails while we're sitting here about it, pushing it
7 through as fast as I can. I can't squeeze water from a
8 rock. That's all I can say.

9 MS. LUCAS: We're concerned. I don't know if
14:58:14 10 upset is fair. We're concerned, and we do object to the
11 fact that this has now been going on since December --
12 November with you, and Cleveland has now repeatedly ignored
13 orders from you and continues to do so. And in this
14 instance, Cleveland was the one who requested this order and
14:58:35 15 consented to it.

16 I do -- I am sympathetic that Mark is working hard and
17 he's pushing people, but at this point, we need an update on
18 what they are doing because they cannot keep ignoring orders
19 from you, and not even acknowledging that they're ignoring
14:58:54 20 them repeatedly, and give themselves extensions.

21 This is -- this is the same issue that we're having
22 with LERMS, the same issue we're having with the call back,
23 and we need them to finish. And if it's a matter of
24 collecting and running a privilege screen and de-duplicating
14:59:12 25 and just sending us the documents, we don't have a problem

1 with that. We do have a problem with this continuing to
2 drag out.

3 There are --

4 MR. PIFKO: To be clear, we're not holding up
14:59:25 5 anything by reviewing the documents. It's just an IT issue
6 right now. I'm happy to expedite the production of any new
7 documents as soon as possible.

8 SPECIAL MASTER COHEN: I don't know when our
9 meeting will be next week, but this needs to be finished by
14:59:48 10 then. It really is true that you've asked for a bunch of
11 extensions at times. I get that. You're trying hard. But,
12 this needs to be finished. Okay?

13 MR. PIFKO: Okay.

14 SPECIAL MASTER COHEN: So whoever is in the
15:00:02 15 Cleveland IT Department, they need to understand that
16 vacation is over.

17 MR. PIFKO: It would help if you -- if in a
18 one sentence e-mail, you say, "Here's my ruling. I need
19 it," I can make sure everybody in the City is aware of the
15:00:15 20 order.

21 SPECIAL MASTER COHEN: Ms. Lucas, why don't
22 you provide me with that one sentence, and I'll use it as my
23 sentence and forward it.

24 MS. LUCAS: Can do, your Honor. Thank you.

15:00:35 25 SPECIAL MASTER COHEN: So might as well stay

1 up there.

2 What about Agenda Item 57, which is the LERMS data?

3 MR. PIFKO: So that, I continue to say that
4 we're going to produce it. Like I said the last time we
15:00:54 5 gave an update, I understand that people high up in the City
6 had to approve its release. I understand that that process
7 is being completed. We were just e-mailing about that as
8 well today. I don't have any further details, but I mean I
9 obviously am going to produce it. I -- that said, as I said
15:01:14 10 earlier, I don't think it's relevant. So -- and I don't
11 think it provides any new information. I think it's just
12 going to be superfluous information about not objecting to
13 producing it. But, we're -- I hope to have it produced as
14 soon as possible.

15:01:29 15 SPECIAL MASTER COHEN: Same story.

16 MS. LUCAS: Thank you. I just wanted to
17 clarify what we were talking about earlier with the LERMS
18 data when Ms. Wu was arguing.

19 Mr. Pifko represented that he had reserved the right
15:01:40 20 to redact the detail reports. And I went back and looked at
21 our discussion about this, and on December 21st when we
22 reviewed our wonderful holiday present of our agreement, he
23 said at Page 98, Line 24, through 99, Line 4, "Tyler
24 Technologies was able to export the detailed reports they
15:02:01 25 want."

1 And so we are getting that. And I think that we
2 should have it within a week or two, but the answer is they
3 were able to do it. And we will be getting the data and we
4 will produce it.

15:02:11 5 And again, on January 3rd, because Mr. Pifko wasn't at
6 the December 27th hearing, again, on the 3rd at Page 81,
7 Line 16, to 82, Line 2, there's another colloquy where he
8 talks about, "It was voluminous, so it took some time. But,
9 they got it to the City, and the City is working on getting
15:02:31 10 it so we can produce it."

11 And you asked a question and he responded, "One of the
12 issues is that the chief lawyer in the City needs to sign
13 off, and I believe she might be out this week. But, we -- I
14 want to say some time next week." So there was never any
15:02:46 15 discussion once they agreed to produce this material that
16 they would be reserving the right to make redactions or
17 withholdings.

18 MR. PIFKO: I said that earlier in the
19 process. Saying I'm going to produce it doesn't mean I'm
15:02:58 20 producing without redactions. I'm producing the data. I
21 stand by that.

22 SPECIAL MASTER COHEN: It needs to happen by
23 the time we get together next week. Same ruling.

24 MS. LUCAS: Okay.

15:03:08 25 SPECIAL MASTER COHEN: All right. It's 3:00.

1 I know there are other things on this list, but I'm just not
2 going to get to them today. I don't know what to do about
3 that, except that we need to finish. All right.

4 There are a couple of things I want to touch on
15:03:45 5 quickly. The Baldassano matter, have the Plaintiffs heard
6 about my ruling in that issue? This is Agenda Item 112. It
7 was an employee, Valli Baldassano, who was -- was it a Teva
8 employee?

9 MR. REED: She was the chief compliance
15:04:47 10 officer at Seflon before the acquisition.

11 SPECIAL MASTER COHEN: Right, who has multiple
12 sclerosis.

13 I had a conversation, a lengthy conversation with her
14 and with Defense counsel on the phone. The short version is
15:04:59 15 the Plaintiffs are going to be allowed a very surgical
16 deposition, lasting two hours long at her house.

17 I'll tell Plaintiffs that the reason we came to two
18 hours is that she stated that she gets very, very foggy at
19 about one hour and 15 minutes. And it may well be you'll
15:05:20 20 ask her a lot of questions that she simply cannot recall.

21 She's clearly in the later throws of her disease. And
22 so that's where the meeting spot is. Three hours at her
23 house.

24 Defense counsel was supposed to send me something. He
15:05:40 25 didn't. So we can ask why I haven't received that yet?

1 MR. REED: Special Master Cohen, while I was
2 here, I received a draft, which I signed off on. So you
3 should get that shortly.

15:05:52

4 And just to clarify, I believe you just said three
5 hours. I think --

6 SPECIAL MASTER COHEN: No, I said two. If I
7 said three, I misspoke.

8 MR. REED: Thank you.

15:06:00

9 SPECIAL MASTER COHEN: Agenda Item 116 looks
10 like this is now agreed on. That is an attorney's eyes only
11 designation.

15:06:15

12 Last sentence in the notes there says Plaintiffs'
13 proposed revisions are acceptable to Defendants. So what I
14 would like the parties to do is please to file a joint
15 proposed order on that.

16 And then just to end with a bang, Agenda Item Number
17 109, the depositions of Richard Sackler and Kathy Sackler
18 will both go forward.

15:06:36

19 MS. LUCAS: Special Master Cohen, just to
20 remind you, on Agenda 120 about Plaintiffs's interrogatory
21 responses, you had asked for submission of Mr. Pifko's
22 letter, which I know he did. But, you were going to enter
23 an order after that.

24 SPECIAL MASTER COHEN: Sorry, 120?

15:06:51

25 MS. LUCAS: Yeah.

1 SPECIAL MASTER COHEN: Ms. Lucas, tell me
2 again what I said I would do.

3 MS. LUCAS: You had asked for Mr. Pifko to
4 submit to you his letter, in which the Plaintiffs had
15:07:35 5 objected to supplementing their interrogatories. And at
6 Page 78 to 79 of the last January 3rd transcript, you had
7 said that -- you entered, I'm paraphrasing, you understood
8 the parties will have expert reports but you agreed to
9 supplement these, you need to supplement them, and I want to
15:07:59 10 look at the letter.

11 MR. PIFKO: The issue wasn't quite ripe
12 because we -- they put it on the agenda and we said we would
13 get a response letter. And then we -- with the deadline we
14 said we would get the response letter was the day after the
15:08:14 15 conference, I believe, or maybe the day of the conference.

16 And then so you said I want to see our response
17 letter, and then I sent it to you. I think it was like
18 right after the conference, I sent you that letter. And
19 then I guess you were going to look at it and make your
15:08:28 20 ruling after seeing our response.

21 SPECIAL MASTER COHEN: Is that letter at one
22 of these exhibits here?

23 MR. PIFKO: Probably not. I wasn't in charge
24 of putting this item on the agenda, but I can resend the
15:08:39 25 letter to you if you want.

1 SPECIAL MASTER COHEN: Yeah. As I said, if
2 it's not listed on the agenda, then I don't know to look at
3 it. There's just too much coming at me to remember to do
4 that.

15:08:50 5 MR. PIFKO: Okay.

6 SPECIAL MASTER COHEN: So I can't rule on that
7 right now. And if you or opposing counsel send me that
8 letter, I'll look at it as soon as I can.

9 I've been waved at to go meet with the Judge. So I
10 think we're done today.

11 MS. WELCH: Special Master Cohen?

12 SPECIAL MASTER COHEN: Who am I looking at?

13 MS. WELCH: Sorry. Donna Welch for
14 Defendants.

15:09:10 15 With respect to 89 and 90, on 89, which is the failure
16 to comply with Discovery Ruling 5 and 13, we received Ms.
17 Singer's letter last night. We'll respond to that now since
18 we didn't get to that item today and tee it up for the call
19 with you next week.

15:09:28 20 And on 90, with respect to claims data, we continue to
21 meet and confer with Mr. Ackerman. He has promised a
22 proposed order to allow reproduction of Rawlings data. I'd
23 like a commitment from him that we'll get that order
24 resolved so that we can try to get that production made
15:09:47 25 before we're in front of you next week.

1 MR. ACKERMAN: Yeah. I will try to get it to
2 you before Friday.

3 MS. WELCH: Thank you.

4 MR. ACKERMAN: I think he wants to sign off on
15:09:57 5 it first, but I'll do my best.

6 MS. WELCH: Thanks.

7 SPECIAL MASTER COHEN: Okay.

8 We're off the record and done, everybody. Thank you
9 for coming. Couldn't finish it all, but that's the time I
15:10:10 10 got.

11 Thank you.

12 (Proceedings adjourned at 3:10 p.m.)

13 C E R T I F I C A T E

14 I certify that the foregoing is a correct
15 transcript from the record of proceedings in the
16 above-entitled matter.

17

18

19

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